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VIA HAND DELIVERY & E-MAIL

James D. Maxwell, II
William C. Lamar
Assistant U.S. Attorneys
U.S. Attorney's Office
900 Jefferson Avenue
Oxford, Mississippi 38655

Re: United States v. Robert L. Moultrie, et. al

Dear Jimmy and Chad:

We write this letter on behalf of Robert L. Moultrie, Nixon E. Cawood, Charles K. Morehead, Facility Holding Corp. d/b/a The Facility Group, and the other entities named as Defendants in the above-captioned case (collectively referred to as "the Defendants"). While we recognize that you are still in the process of providing document discovery, we write to set forth our detailed discovery requests and our attempt to resolve matters without filing motions requiring the Court's involvement.

In order to permit the Defendants to file appropriate motions with the Court, we request that you notify us in writing specifically and promptly of any material that you do not intend to make available, so that our motions can address any disagreements and permit the Court to rule on them.

We request that the Government provide specific written responses to each request below so there will be no misunderstandings about any disagreements which the Court will need to decide.

To adequately prepare for trial, we ask that the Government furnish the following discovery material pursuant to Rule 16 of the Federal Rules of Criminal Procedure; Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, including Giglio v. United States, 405 U.S. 150 (1972), United States v. Agurs, 427 U.S. 97 (1976), United States v. Bagley, 473 U.S. 667 (1985), Kyles v. Whitley, 514 U.S. 419 (1995), Morrow v. Dretke, 367 F.3d 309 (5th Cir. 2004), the Jencks Act; the Fifth and Sixth Amendments to the United States Constitution; and applicable rules of prosecutorial ethics and Justice Department regulations.

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If any of the requested materials are in the voluminous discovery that the Government is in the process of producing, please specifically identify where they can be found.

Discovery Requests

The Defendants are requesting the following documents, materials and evidence in the "possession, custody, or control" of the Government. The terms "control" and "Government" include all materials and evidence in the possession, custody *or* control of not only the Grand Jury and the U.S. Attorney's Office for the Northern District of Mississippi, *but also* in the possession, custody *or* control of the Federal Bureau of Investigation, The Mississippi Beef Processors Joint Investigative Task Force or the Mississippi State Auditor's Office (hereinafter "State Auditor's Office"). According to the U. S. Department of Justice press release issued by the U. S. Attorney for the Northern District of Mississippi dated March 25, 2008, "this investigation first began with the formation of the The Mississippi Beef Processors Joint Investigative Task Force" and the Indictment "is the result of ... investigation by agents of the FBI and the State Auditor's Office." Thus, the Defendants are requesting documents, materials and evidence in the possession, custody or control of the U.S. Attorney's Office, the Grand Jury, the F.B.I., the State Auditor's Office and the Mississippi Beef Processors Joint Investigative Task Force, all of which collectively investigated this matter as a prosecutive team. U.S. v. Pascual, 606 F.2d 561 (5th Cir. 1979); United States v. Scruggs, 583 F.2d 238 (5th Cir. 1978), *reh'g denied*, 588 F.2d 829.

1. Any written or recorded statement, proffer, testimony, interview, confession, or admission or the substance of any oral statements relating, directly or indirectly, to the charges in this case made by, attributable to, or arguably admissible against any of the Defendants to the Grand Jury, investigating officers, agents, auditors or to third parties. This request includes, without limitation:

a. Any relevant written or recorded statements made by, or attributable to, any of the Defendants, or copies thereof, within the possession, custody or control of any federal, state, county or municipal agent, investigator, auditor or attorney (hereinafter "Government agent"), the existence of which is known, or by the exercise of due diligence may become known to a Government agent;

b. any statement or admission by, or attributable to, any of the Defendants which may have been incorporated in any report, memorandum, transcript, or other document or recording prepared by a Government agent, or by any person working in conjunction with such agents;

c. that portion of any written record containing the substance of any relevant oral statement made by, or attributable to, any of the Defendants whether before

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or after arrest in response to interrogation by any person then known by that Defendant to be a Government agent;

d. the substance of any other relevant oral statement made by, or attributable to, any of the Defendants whether before or after arrest in response to interrogation by any person then known by that Defendant to be a Government agent;

e. any reports, audits, documents, memoranda or any other tangible recording or memorialization, e.g. FBI form 302, of any and all proffer interviews of Nixon E. Cawood, Charles K. Morehead or any other person who may be called as a witness by the Government in its case-in-chief at trial;

f. any written or recorded statement, or the substance of any oral statement, made by any employee of any of the Defendants. *See* Rule 16(a)(1)(c). This request is not limited to statements made to the Grand Jury, but also to statements, oral, written or recorded, made by any employee, current or former, of any of the Defendants to any Government agent, and

g. any testimony or written admission to be offered against any Defendant under Rule 1007 of the Federal Rules of Evidence.

2. Any written or recorded statement, or the substance of any oral statement, made by anyone, including any co-Defendant, that inculcates any of the other Defendants, the use at trial of which would raise issues under Crawford v. Washington, 541 U.S. 36 (2004), or Bruton v. United States, 391 U.S. 123 (1968). In addition, please identify specifically the testimonial statements of any of the Defendants you intend to utilize in your case in chief so that we can timely move for any relief to which the Defendants may be entitled pursuant to, among other provisions, Rule 8 of the Federal Rules of Criminal Procedure.

3. A copy of any prior criminal record of any of the Defendants. Fed. R. Crim. P. 16(a)(1)(D).

4. All books, papers, documents, photographs, videotape recordings, audiotape recordings, microfilm, microfiche, computer data storage systems or tangible objects, or copies or portions thereof (hereinafter referred to in this letter as "documents"), that were obtained by or obtained from or belong to any of the Defendants. This request includes any documents obtained from or which were the property of any employee or agent of, or professional consultant to any of the Defendants, in either his personal or business capacity. Fed. R. Crim. P. 16(a)(1)(E)(iii). This request includes, but is not limited to, documents previously produced in response to Grand Jury subpoenas or voluntarily produced to the Government or to the Mississippi State Auditor's Office.

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5. All documents, or copies or portions thereof, which are within the possession, custody or control of the Government, which are material to the preparation of the defense. Fed. R. Crim. P. 16(a)(1)(E)(i). This request includes, but is not limited to, all documents produced to the Government, whether or not pursuant to a Grand Jury subpoena. The request also includes, but is not limited to, all documents the Government believes support the allegations in the Indictment and all documents concerning the transactions referenced in the Indictment. The term "material to the defense" specifically includes, but is not limited to, any evidence which suggests, establishes, implies or tends to prove any the following:

- a. There was no quid pro quo between "the public official" [alleged in ¶ 2 of Count 1 of the Indictment] and any Defendant;
- b. There was no agreement by "the public official" [alleged in ¶ 2 of Count 1 of the Indictment] "in connection with the State of Mississippi's selection of TFG to manage the completion of the design and construction of Mississippi Beef Processors, LLC beef processing plant located in Yalobusha County, Mississippi," as alleged in ¶ 2 of Count 1 of the Indictment;
- c. No campaign contribution was given to "the public official" [alleged in ¶ 2 of Count 1 of the Indictment] to cause or bring about "the State of Mississippi's selection of TFG to manage the completion of the design and construction of Mississippi Beef Processors, LLC beef processing plant located in Yalobusha County, Mississippi," as alleged in ¶ 2 of Count 1 of the Indictment;
- d. Facility Construction Management Inc. was selected to manage the completion of the design and construction of the Mississippi Beef Processing plant because it was the best qualified company for the project;
- e. The decision to select "TFG to manage the completion of the design and construction of Mississippi Beef Processors, LLC beef processing plant located in Yalobusha County, Mississippi," [as alleged in ¶ 2 of Count 1 of the Indictment], occurred on or before the end of March 2003;
- f. Facility Construction Management, Inc. did not bill "approximately \$2,000,000 for 'Services Compensation' in excess of THE FACILITY GROUP'S actual costs," [as alleged in ¶ 19 of Count 2 of the Indictment];
- g. In ¶ 3.1.2 of the Project Management Agreement, Facility Construction Management Inc. was not limited to billing for costs "at cost," [as alleged in ¶ 12 of Count 1 of the Indictment];

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- h. In ¶ 3.1.2 of the Project Management Agreement, Facility Construction Management Inc.'s "Services Compensation" "shall include compensation for all" of each the following nine separate categories of expenses: (1) "labor," (2) "salaries," (3) "indirect labor costs," (4) "social burdens," (5) "materials," (6) equipment," (7) temporary facilities," (8) "insurance," and (9) "general conditions costs";
- i. In ¶ 3.1.2 of the Project Management Agreement, Facility Construction Management Inc.'s "Services Compensation" included all (1) "labor," (2) "salaries," (3) "indirect labor costs," (4) "social burdens," (5) "materials," (6) equipment," (7) temporary facilities," (8) "insurance," and (9) "general conditions costs" "attributable to performance of the Services," not just "directly incurred in ... performance of the Services";
- j. There is no definition, term or provision in the Project Management Agreement which defines or governs what is meant by or how to determine or calculate "insurance," "indirect labor costs," "general conditions costs" or "social burdens" as those terms are used in ¶ 3.1.2 of the Project Management Agreement;
- k. The methods used by Facility Construction Management Inc. to determine, allocate or calculate "insurance," "indirect labor costs," "general conditions costs" or "social burdens" as those terms are used in ¶ 3.1.2 of the Project Management Agreement are reasonable methods within the industry;
- l. According to the 'Services Compensation' provision in ¶ 3.1.2 of the Project Management Agreement, Facility Construction Management Inc. would receive compensation for services with a minimum of \$2,500,000.00, but up to, although not to exceed, \$3,021,418.00;
- m. The use of a "multiplier" in determining, assessing, or allocating cost in relation to a construction or design-build project is a routine, acceptable, or permissible practice within the construction industry.
- n. The use of a percentage of the contract price is a routine, acceptable, or permissible practice or method of allocating insurance costs within the construction industry.
- o. The use of a "utilization rate" or some other measurement of the level of employee usage is a routine, acceptable, or permissible practice or method of determining or allocating costs within the construction industry.

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- p. All tape recording or dictation notes of the Mississippi Land, Water and Timber Resources Board meetings regarding the Mississippi Beef Processors project or Richard Hall, or The Facility Group for February 2003 through June 2003.
- q. Any oral or written summaries of Leland Speed and/or Terry Hudson requesting Nixon E. Cawood to help sell the Mississippi Beef Processors plant.
- r. Any notes or summaries of Nixon E. Cawood's meetings with representatives of the State Auditors Office prior to the State Auditors Office's report regarding the plant.
- s. Any documentation or notes or summaries of oral or written communication regarding the submissions of the final invoice by the Mississippi Development Authority to the Mississippi Land, Water and Timber Resources Board on behalf of The Facility Group including but not limited to communications regarding the discount credit offered by The Facility Group.
- t. Any notes or summaries of interviews by government officials prior to the plant startups, that reflected that Richard Hall had the ability to profitably run the plant.
- u. Any notes or reports from Terry Hudson (Mississippi Development Authority), William Mendelhall, or the State Auditors Office officials relating to the visit to TGF Office to discuss Change Order No. 1 and Change Order No. 2 and project costing after plant closed.
- v. Any accompanying verifications made by Chance Carter or Dusty Hinton that accompanied The Facility Group invoices to the Community Bank each month.
- w. Any notes, summaries, documents or memos The Facility Group meeting with Lt. Governor, Amy Tuck.
- x. Sean Carothers' knowledge or intent relating to Memorandum of Understanding text about the increased fees between the two (2) Sean Carothers' contracts.
- y. Any training manuals or step up plans prepared by Richard Hall or the Mississippi Development Authority or Community Bank that showed his prior proper planning for start up.
- z. Any reports received by Mississippi Development Authority or Community Bank on the design and construction of the plant that were advantageous to the marketability of the plant.
- aa. Written or oral response from Aiso Eglen's bonding company relating to its release from the performance guarantee portion of P&P Bond.

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- bb. Notes or summaries of Lester Spell interviews relating to The Facility Group and his support of Richard Hall and Sean Carothers.
 - cc. Notes reflecting Wyman Jones' views regarding funding Change Order No. 1 and Change Order No. 2.
 - dd. Notes, summaries or documents relating to Sean Carothers' estimates for the whole project, including his fees, insurance and soft cost itemization, including but not limited to his takeover proposal which he would not guarantee.
 - ee. Documents relating to Sean Carothers' change order requests for time extensions and justifications for same.
 - ff. All notes, documents, or memos relating to Mississippi Development Authority or Community Bank supporting the sale of the plant, including but not limited to, build drawings, questions on the real need for rendering plane, and waste treatment capacity issues.
 - gg. All notes, documents, correspondence or memos of Richard Hall relating to his requests for line of credit financing from GE Capitol.
6. All documents, or copies or portions thereof, which are within the possession, custody or control of the Government that the Government intends to use at trial in its case-in-chief. Fed. R. Crim. P. 16(a)(1)(E)(ii). Given the volume of documents in this case, we request that you specifically identify from among the documents produced pursuant to our Rule 16 requests the documents in this category, both to enable counsel to prepare for trial effectively and to afford us an opportunity to file appropriate motions, and to prevent any delays at trial. *See, e.g., United States v. Turkish*, 458 F. Supp. 874, 882 (S.D.N.Y. 1978), *aff'd*, 623 F.2d 769 (2d Cir. 1980).
7. Any and all photographs and audiotape and videotape recordings that were made in conjunction with this case or which relate in any manner to this case that are in the possession, custody or control of the Government. Fed. R. Crim. P. 16(a)(1)(E).
8. All results or reports of physical or mental examinations, scientific tests or experiments, or copies thereof, and all documents referring or relating to such reports, that were conducted in connection with any investigation of the charges contained in the Indictment, including, but not limited to, forensic analyses of any documents, physical, mental or polygraph examinations, handwriting analyses, finger-print comparisons, and electronic testing. Fed. R. Crim. P. 16(a)(1)(F).
- a. This includes any and all polygraph examinations administered by the Government, or anyone else, to any witnesses and persons of interest, including the following: (1) Richard N. Hall, (2) Sean Carothers, and (3) Robin Williams.

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This request includes copies of all charts and data created during the administration of the polygraph as well as all pre- and post-test interview memoranda and reports of results. Note that such materials are discoverable regardless of whether they are admissible, so long as they may lead to discovery of admissible evidence. Bradley v. Nagle, 212 F.3d 559 (11th Cir. 2000).

9. With respect to evidence that the Government intends to use at trial under Rules 702, 703, or 705 of the Federal Rules of Evidence, a list of the names of the persons the Government intends to call as expert witnesses, a written summary describing the witnesses' opinions, the bases and reasons for those opinions, and the witnesses' qualifications. Fed. R. Crim. P. 16(a)(1)(G).

Specifically, the Defendants are requesting a written summary of any and all expert testimony that the Government intends to use during its case-in-chief at trial, including, but not limited to testimony offered by the State Auditor's Office, Sean Carothers, Richard N. Hall, Jr., or any other person concerning any allegations in the Indictment. As explained in the Advisory Committee Notes following Rule 16, the Defendants need:

- (a) each witness's qualifications "to determine whether in fact the witness is an expert within the definition of Federal Rule of Evidence 702";
- (b) The summary of expected testimony "to permit more complete pretrial preparation," and to prevent delay in the trial;
- (c) the base(s) and reason(s) for each expert's opinion regardless of whether the expert prepared a written report; and,
- (d) "any information that might be recognized as a legitimate basis for an opinion or inference under Federal Rule of Evidence 703" or Rule 702 regardless of whether the Government deems the witness to be an expert or not.

The Defendants need this material in order to (a) reasonably determine whether rebuttal witnesses are necessary to adequately defend this matter, and (b) to determine whether a Daubert motion is appropriate. "The defense's ability to meet this standard [in Daubert, explained in United States v. Hansen, 262 F.3d 1217 (11th Cir. 2001)] in this case presupposes that the Government has fully complied with Rule 16(a)(1)(G)" [August 9, 2004 Order at 7, U. S. v. Griffin Industries, (CR 303-020, S.D. Ga. 2004) (Bowen, C. J.)]

As a reminder, under Rule 16(b)(1)(C)(i), the Defendants' reciprocal obligation under Rule 16(a)(1)(G) is triggered only "if ... the Government complies" with the Defendants' request under the Rule, that is, the Defendants' reciprocal obligations do not arise until the Government first complies with the Defendants' request. The logical reason for this Rule is that the Defendants cannot intelligently decide whether rebuttal expert testimony is necessary unless and until they know the full parameters of the

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Government's expert evidence.

10. As a predicate to motions pursuant to Rule 12 of the Federal Rules of Criminal Procedure:

a. Please confirm that no evidence or other information in the Government's possession, custody, or control was obtained by a search and seizure. If any evidence was obtained by search and seizure, please provide a description of such evidence and if said search was warrantless, set forth the nature of the information upon which the search was based and the date said information was received by the Government;

b. Please confirm that no evidence or other information in the Government's possession, custody, or control was obtained through the use of a beeper, other tracking device, mail cover, or electronic or audio surveillance of any kind. If any evidence was obtained through these investigative techniques, please:

i. set forth the date, time, place, and a description of each interception; and

ii. provide any and all documents related to or reflecting any information derived therefrom.

If any evidence was obtained through any means set forth in subparagraphs (a) and (b), we also request all relevant applications or other supporting documents for court orders, all such court orders, all reports by the Government to the court, and all tapes, logs, transcripts, and line sheets resulting from such interception or surveillance.

c. Please inform us as to whether any recording or other result of electronic or audio surveillance has been scientifically tested, altered or treated in any way. If so, please:

i. set forth the time, date, place and a description of each test or alteration;

ii. identify the examiner, and

iii. provide a copy of any reports and all documents relating or referring to such reports.

d. Please inform us as to whether any tapes, reports of communications, fruits of any interception or search, or notes of any interview requested herein have been or are intended to be discarded or destroyed. Please identify any such materials in sufficient detail to permit us to make a timely request to the Court for appropriate relief.

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e. Please inform us whether any persons were present during Grand Jury proceedings other than the grand jurors, the witness under examination, the court reporter, and Assistant United States Attorneys, naming such persons and stating their purpose for being present at the Grand Jury proceedings.

f. Please inform us whether any Grand Jury materials, including Grand Jury transcripts or any documents or information produced to the Grand Jury, were disclosed or released to any person other than the grand jurors, court reporters, and Assistant United States Attorneys at any time, before the unsealing of the Indictment on March 25, 2008. This request includes, but is not limited to, information concerning the following:

- i. Provide a Rule 6(c) list of all persons who had access to Grand Jury information, including the sealed Indictment;
- ii. whether any persons with access to the Grand Jury information, including the sealed Indictment, spoke with any of the persons employed by, associated with, or involved with any of the following persons or entities:
 - a. Any radio talk shows or other radio programs, including, but not limited to, the "Gallo Radio Show," the "JT and Dave Show," and any programs on the "Supertalk Mississippi" radio network or affiliates, or
 - b. *The Clarion Ledger*;
- iii. whether any persons with access to Grand Jury information, appropriately or inappropriately, showed, supplied or granted access to Grand Jury information to any person with the State Auditor's Office; when such occurrence took place, who did so, and what the justification was at the time the access occurred;
- iv. all persons who appeared before the Grand Jury, the date(s) when those persons appeared before the Grand Jury, and the subject matter asked of them during the Grand Jury;
- v. all persons subpoenaed to appear before the Grand Jury, regardless of whether they actually appeared before the Grand Jury, and explain why each such person ultimately did not appear before the Grand Jury;
- vi. For all persons who were subpoenaed by the Grand Jury, regardless of whether they appeared before the Grand Jury, provide copies of all documents, memoranda, and other memorializations of oral statements

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made by each such person to the Government agents, including the contemporaneous notes of all persons in attendance at such discussions with the person; and,

- vii. all legal instructions and other legal advice presented to the Grand Jury before or at the return of all Counts of the Indictment, but particularly with respect to the return of Count 1 of the Indictment.

11. Pursuant to Rule 12(b)(4)(B) of the Federal Rules of Criminal Procedure and Rule 1006 of the Federal Rules of Evidence, please inform us whether the Government will seek to offer any chart, summary, or calculation in evidence and if so, please make available for inspection and copying any such chart, summary, or calculation, as well as all writings, recordings, photographs, videotape recordings, or other information on which such charts, summaries, or calculations are based. Please provide a summary of the proposed testimony, a copy of the summary and a copy of the documents on which the summary is based. The Defendants need this information to enable them to adequately prepare for trial and so as not to delay the trial. The Defendants also need this information to determine whether any summary witness will be offering expert testimony within Rules 702 and 703 of the Federal Rules of Evidence. U. S. v. Hart, 295 F.3d 451, 457 (5th Cir. 2002).

12. Pursuant to Rule 1002 of the Federal Rules of Evidence, please identify any non-original writing, recording or photograph which the Government intends to offer into evidence in its case-in-chief at trial.

13. Pursuant to Rule 1005 of the Federal Rules of Evidence, please identify any public records which the Government intends to offer into evidence in its case-in-chief at trial.

14. Pursuant to the provisions of Rule 104 of the Federal Rules of Evidence, Rule 12(b)(4)(B) of the Federal Rules of Criminal Procedure, and the Defendants' right to effective representation by counsel and a fair trial, we request that the Government disclose whether it intends to offer in its case in chief as a statement by, or attributable to, the Defendants any of the following and if so, that the Government identify the applicable statements:

- a. Any statement made by, or attributable to, any of the Defendants in either an individual or a representative capacity, Fed. R. Evid. 801(d)(2)(A);
- b. Any written or recorded statement or the substance of any oral statement as to which any of the Defendants, or an agent thereof, manifested his adoption or belief in its truth, Fed. R. Evid. 801(d)(2)(B);

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c. Any written or recorded statement or the substance of any oral statement made by another individual or entity which was purportedly authorized by any of the Defendants, or is deemed to be an admission by any of them, Fed. R. Evid. 801(d)(2)(C);

d. Any statement by an agent or servant of any of the Defendants concerning a matter within the scope of his agency or employment made during the existence of such a relationship, Fed. R. Evid. 801(d)(2)(D);

e. Any written or recorded statement, or the substance of any oral statement, by a co-conspirator made during the course of or in furtherance of the conspiracy alleged in the Indictment, Fed. R. Evid. 801(d)(2)(E); or

15. Pursuant to Rule 806 of the Federal Rules of Evidence, provide to the Defendants any evidence which would tend to attack, contradict, impeach, or discredit the credibility of any declarant of a hearsay statement which the Government intends to introduce under Rules 801(d)(2)(C), (D) or (E) of the Federal Rules of Evidence.

16. Pursuant to the Fifth and Sixth Amendments to the United States Constitution, Rules 12(b)(4)(B) and 16(a)(1)(D) of the Federal Rules of Criminal Procedure, and Rules 403 and 404(b) of the Federal Rules of Evidence, we request that, as soon as possible, the Government disclose all evidence of other similar crimes, wrongs, or acts, allegedly committed by any of the Defendants, upon which the Government intends to rely. If the Government intends to offer any such evidence, please set forth the date, place and nature of each "similar" act so that we can properly ask the Court for a determination concerning its admissibility pursuant to Fed. R. Evid. 403 and 404 and so as not to delay the case at trial.

17. We request that the Government provide a list of the names and addresses of all witnesses that the Government intends to call in its case in chief. We also request that the Government provide premarked copies of the exhibits it intends to offer in its case-in-chief. This is essential to our preparation for trial, and accordingly will save time, prevent unnecessary delay of the trial, and allow all parties to have an opportunity to meet and discuss issues related to the authenticity of documents, stipulations, and other issues that may reasonably arise at trial.

18. Given the scope of this case, we request production of all materials required to be produced under 18 U.S.C. § 3500 and Rule 26.2, Federal Rules of Criminal Procedure no later than four weeks before the trial date. Witness statements include, but are not limited to Grand Jury transcripts, affidavits, declarations, and summaries of witness interviews contained in FBI Form 302s and other similar Government forms and reports. Witness statements also include verbatim and contemporaneous notes of witness interviews made by any Government agent, including by an AUSA who was present during the interview.

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We request that the Government preserve all original interview notes, reports and memoranda.

This early production is essential to our preparation for trial, and accordingly will save time, prevent unnecessary delay of the trial, and allow all parties to have an opportunity to meet and discuss issues that may reasonably arise at trial, as well as stipulations that could expedite the trial.

19. Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, including United States v. Agurs, 427 U.S. 97 (1976), Giglio v. United States, 405 U.S. 150 (1972), and Morrow v. Dretke, 367 F.3d 309 (5th Cir. 2004), and pursuant to the Department of Justice's Policy Regarding Disclosure of Exculpatory and Impeachment Information, set forth in section 9-5.001 of the U.S. Attorney's Manual, we request (i) immediate disclosure of all exculpatory material in the Government's possession, custody, or control, or otherwise known to the Government; and (ii) disclosure at least four weeks prior to the trial date of all impeachment material in the Government's possession, custody or control or otherwise known to the Government.

This early production is essential to our preparation for trial, and accordingly will save time, prevent unnecessary delay of the trial, and allow all parties to have an opportunity to meet and discuss issues that may reasonably arise at trial

Exculpatory and impeachment "material" includes not only documents or other tangible items (including written statements or statements that have been reduced to writing by the Government), but also the substance of any statements made to the Government that have not been reduced to writing. In other words, if a witness's statements to the Government contain exculpatory or impeachment material, Brady and its progeny require the Government to disclose the substance of those statements, whether or not they have been reduced to writing. See United States v. Rodriguez, 496 F.3d 221 (2d Cir. 2007).

Although explained in detail below, this request generally seeks copies of all materials known to the Government, or which through due diligence may be learned from the investigating agents or witnesses in this case or persons interviewed in connection with the investigation, that are favorable to, or tend to mitigate any punishment of, any Defendant or which may lead to such materials. Please include the names, addresses, and telephone numbers of all persons who know or may know of any such favorable material or who may lead to persons or material which may be favorable to any Defendant. Also include all written or recorded statements or the substance of oral statements by any person which are in any way conceivably inconsistent with, or contradicts the testimony or expected testimony any witness will give at trial and any other evidence that otherwise reflects upon the credibility, competency, bias or motive of any Government witness. Such topics include, but are not limited to:

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Detailed Requests for Exculpatory Material

a. All documents, testimony or any other information in the Government's possession, custody, or control made by any witnesses that indicates that any of the Defendants

i. Did not know of the PAC contributions or reimbursement of campaign contributions to the "public official";

ii. Was not involved in the making or reimbursement of campaign contributions to the "public official";

iii. Never viewed the Mississippi Beef Processor Project Management Agreement while the Mississippi Beef Processor Project was ongoing;

iv. Were not involved or had no knowledge of the negotiations concerning the Mississippi Beef Processor Project Management Agreement;

v. Were not involved or had no knowledge of the administration of the Mississippi Beef Processor Project Management Agreement;

vi. Did not participate in discussion concerning The Facility Group's performance under the Mississippi Beef Processor Project Management Agreement.

b. All documents, testimony or any other information in the Government's possession, custody, or control made by any witness that indicates

i. That there was no quid pro quo provided by the "public official" or his agents to any of the Defendants in exchange for campaign contributions;

ii. That there was no quid pro quo understanding between any of the Defendants and the "public official," or his agents, involving the campaign contributions made to the "public official";

iii. That in making the campaign contributions to the "public official," there was no intent on the part of any of the Defendants to enter into a quid pro quo arrangement with the "public official" or through his agents;

iv. That the "public official" never influenced, or attempted to influence, the awarding of the Mississippi Beef Processor Project Management Agreement;

v. That the Facility Group appropriately billed the Mississippi Beef Processor Project under the terms of the Project Management Agreement.

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vi. That the total amount of time an individual invoiced to the Mississippi Beef Processor Project was a fair approximation of that individual's time actually spent working on the Mississippi Beef Processor Project;

vii. The perceived role each of the following Defendants played in the administration or implementation of the Mississippi Beef Processor Project:

- a. Robert L. Moultrie,
- b. Nixon E. Cawood, or,
- c. Charles K. Morehead.

viii. The perceived role each of the following Defendants played in the making of campaign contributions to the "public official":

- a. Robert L. Moultrie, or,
- b. Nixon E. Cawood.

c. The names and addresses of all persons whom the prosecution, its agents, and its representatives, believe to have information favorable to any Defendant with reference to the charges contained in the Indictment, and the substance of that information.

d. All documents or any other information reflecting or relating to any debate or discussion within the DOJ or any other state or federal Government agency concerning the legitimacy, legality or permissibility of any transaction mentioned in the Indictment; this includes any discussion between federal and Mississippi state Government entities concerning the legitimacy, legality, or permissibility of any criminal actions that may, could be, or could have been brought against any of the Defendants under state or federal law.

e. Any and all phone, credit card, and email records in the Government's possession, custody, or control, for or from the office phone, home phone, cell phone, personal pager, home computer, or work computer of the following people:

- i. Robin Williams,
- ii. Richard N. Hall, or,
- iii. Sean Carothers.

f. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government that is in the

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possession, custody or control of the Government that tends to establish or imply that Robert L. Moultrie was not involved in the scheme to defraud alleged in Counts 2 through 16.

g. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government that tends to establish or imply that Governor Ronnie Musgrove did not influence the decision to enter into the Letter of Intent with The Facility Group, as alleged in ¶ 10 of Count 1 of the Indictment.

h. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government that tends to establish or imply that Governor Ronnie Musgrove did not influence the decision to enter into the Project Management Agreement with The Facility Group, as alleged in ¶ 12 of Count 1 of the Indictment.

i. Any documents, memoranda, or other memorializations of any evidence, oral or written, that tends to establish or imply that Governor Ronnie Musgrove did not influence the decision to enter into the Appointment Agreement with The Facility Group, as alleged in ¶ 31 of Count 1 of the Indictment.

j. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government that tends to establish or imply that Governor Ronnie Musgrove did not influence the terms of the Letter of Intent with The Facility Group, as alleged in ¶ 10 of Count 1 of the Indictment.

k. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government that tends to establish or imply that Governor Ronnie Musgrove did not influence the terms of the Project Management Agreement with The Facility Group, as alleged in ¶ 12 of Count 1 of the Indictment.

l. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government that tends to establish or imply that Governor Ronnie Musgrove did not influence the terms of the Appointment Agreement with The Facility Group, as alleged in ¶ 31 of Count 1 of the Indictment.

m. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government obtained from (1) the Mississippi Development Authority, or (2) the Community Bank, or (3) the Mississippi Land, Water and Timber Resources Board, or (4) William Mendelhall, or (5) the State Auditor's Office that:

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i. Tends to offer explanations why the Mississippi Beef Processor Project failed; including, but not limited to formal reports, informal memoranda, underlying interviews, internal memoranda;

ii. Tends to attribute the failure of the Mississippi Beef Processor Project to Richard Hall, Sean Carothers, Robin Williams, or any other individual other than a Defendant;

iii. Tends to show that The Facility Group was chosen to complete the Mississippi Beef Processor Project as early as March 31, 2003;

iv. Tends to show that The Facility Group was the most qualified bidder to manage the completion of the Mississippi Beef Processor Project;

v. Tends to show that the Facility Group notified the state of Mississippi and/or parties to the Project Management Agreement that there was a problem with the contract for the Beef Project between Richard Hall and Sean Carothers.

vi. Tends to show any kind of analysis or discussion with concerning the definition, meaning, or understanding of the following contractual terms in the Project Management Agreement:

a. "at cost,"

b. "FCMI's compensation for Services shall be at cost not to exceed \$3,021,418.00 (the "Services Compensation"), provided that the minimum Services Compensation shall be \$2,500,000.00,"

c. "indirect labor costs,"

d. "insurance,"

e. "labor,"

f. "salaries,"

g. "social burdens,"

h. "materials,"

i. "equipment,"

j. "temporary facilities,"

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- k. "general conditions costs,"
- l. "profit,"
- m. "general overhead,"
- n. "directly incurred,"
- o. "attributable to performance of Services,"
- p. "not to exceed \$3,021,418.00," and,
- q. "minimum Services Compensation shall be \$2,500,000.00;"

vii. Tends to show that The Facility Group satisfactorily completed its performance of the Project Management Agreement;

viii. Pertains to any final inspection engaged in for the purpose of selling the Mississippi Beef Plant;

ix. Pertains to any internal documentation about representations made to anyone outside the Mississippi Development Authority about the quality of the plant when attempts were made to sell the plant;

x. Pertains to any evidence that Mississippi Development Authority asked The Facility Group to help procure the sale of the plant;

xi. Tends to show that The Facility Group helped sell the plant by helping with walkthroughs given to potential buyers;

xii. Tends to show that The Facility Group and Leland Speed and Terry Hudson engaged in conversations for the purpose of selling the plant to other buyers; including any copies or other memorializations of Terry Hudson's internal notes regarding attempts to sell the plant;

xiii. Tends to show that the State of Mississippi, through the Lt. Governor Amy Tuck and her office, solicited the aid of Nick Cawood and The Facility Group as it attempted to sell the plant;

xiv. Tends to show that The Facility Group requested of the members of the Mississippi Government that the subcontractors on the Mississippi Beef Processor Project get paid in full; including but not limited to such conversations with Lt. Governor Amy Tuck;

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xv. Tends to show the Mississippi Development Authority's opinion, valuations, or determination of The Facility Group's qualifications;

xvi. Tends to show that other persons or entities bidding on or seeking to obtain work on the Mississippi Beef Processor Project were not sufficiently qualified and or had a conflict of interest;

xvii. Evidences any and all drafts of the Project Management Agreement, including but not limited to documents or other memoranda noting (1) changes between draft versions of the contract, and (2) the fact that initially the contract was to contain two lump sum provisions for both the profit and fee portion of the contract;

xviii. Evidences any statement or discussions concerning how, when, and in what manner, subcontractors would be paid, or not paid;

xix. Internal documentation or memoranda that concerns the fitness of Richard Hall; including but not limited to discussion concerning:

a. His experience, including the fact that other beef plants he previously owned, built or operated had failed or been unsuccessful.

b. His credibility, including whether he was considered trustworthy and what his reputation for trustworthiness, honesty and truthfulness was in the community.

c. Whether Hall submitted inappropriate charges in connection with the project; including charges pertaining to (1) his home, (2) his personal vehicles, or (3) the property of other friends, relatives, or family members.

d. Statements made by Richard Hall during the State's audit of the Mississippi Beef Processor Project;

xiv. Internal documentation or memoranda that concerns the fitness of Sean Carothers; including but not limited to discussion concerning

a. Carothers' experience, including the fact that other beef plants he previously owned, built or operated had failed or been unsuccessful.

b. Carothers' credibility, including whether he was considered trustworthy and what his reputation for trustworthiness, honesty and truthfulness was in the community.

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c. Whether Carothers submitted inappropriate charges in connection with the project; including charges pertaining to (1) his home, (2) his personal vehicles, or (3) the property of other friends, relatives, or family members.

d. Statements made by Sean Carothers during the State's audit of the Mississippi Beef Processor Project;

xx. Evidences internal statements from the Mississippi Development Authority that the Mississippi Beef Processor Project should not, would not, or could not be completed or was not economically feasible regardless of its engineering feasibility.

n. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government that evidences testimony of individuals who have testified, provided evidence, or stated that there was no fraudulent billing by The Facility Group on the Mississippi Beef Processor Project; including, but not limited to, information tending to show that:

i. The Defendants have integrity;

ii. The Defendants did not intentionally overbill;

iii. The Defendants' billing practices were common for the industry; or,

iv. The Facility Group's billing of other clients in the same manner was considered acceptable and appropriate;

o. The presentence reports of Richard Hall, Robin Williams, Sean Carothers or any other witnesses who may be called by the Government to testify.

p. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government containing information regarding the veracity or lack of credibility of any Government witnesses, including Richard Hall, Sean Carothers, or Robin Williams.

q. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government containing information as to all discussion between Sean Carothers and the Government related (1) to charges brought or not brought against him by the federal Government, or (2) charges brought or not brought against him by the State of Mississippi, including, but not limited to, information concerning Sean Carother's cooperation in an effort to prevent the prosecution of

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- i. Carothers Construction, or
- ii. His father or any other family member, relative or employee of Carothers Construction.

- r. Information identifying all persons interviewed by the Government in connection with this case and the number of times that person was interviewed, including the dates of all such interviews and any contemporaneous memoranda or other documentation of the subject matter and content of the interview.

- s. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government containing information concerning how other design build contractors have administered construction contracts, including but not limited to information pertaining to labor multipliers, insurance rates, and utilization rates.

- t. All interviews and notes and memoranda of all interviews with any witnesses, particularly as one interview may contradict another; this specifically includes notes of prosecutors who were present and which were taken contemporaneously with the interview.

- u. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government containing notes or memoranda concerning any representations made by Richard Hall or Sean Carothers to any member of the Mississippi Legislature; this includes any documents pertaining to Carothers or Hall's lobbying for the ownership, or work on, the Mississippi Beef Processor Project.

- v. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government containing any representations made by Richard Hall or Sean Carothers, to the State Auditor's Office before, after or during its investigation of the failure of the Mississippi Beef Processor plant.

- w. Any documents, memoranda, or other memorializations of any evidence, oral or written, that is in the possession, custody or control of the Government containing evidence of any campaign contributions made by Richard Hall, Sean Carothers, or Robin Williams.

- x. Any and all documentation regarding the recent case involving Blue Cross Blue Shield's reimbursement of employee contributions to the state insurance commissioner.

- y. Any report reflecting, explaining, reporting or opining why the Mississippi Beef Processors plant failed

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z. All tape recording or dictation notes of the Mississippi Land, Water and Timber Resources Board meetings regarding the Mississippi Beef Processors project or Richard Hall, or The Facility Group for February 2003 through June 2003.

aa. Any oral or written summaries of Leland Speed and/or Terry Hudson requesting Nixon E. Cawood to help sell the Mississippi Beef Processors plant.

bb. Any notes or summaries of Nixon E. Cawood's meetings with representatives of the State Auditors Office prior to the State Auditors Office's report regarding the plant.

cc. Any documentation or notes or summaries of oral or written communication regarding the submissions of the final invoice by the Mississippi Development Authority to the Mississippi Land, Water and Timber Resources Board on behalf of The Facility Group including but not limited to communications regarding the discount credit offered by The Facility Group.

dd. Any notes or summaries of interviews by government officials prior to the plant startups, that reflected that Richard Hall had the ability to profitably run the plant.

ee. Any notes or reports from Terry Hudson (Mississippi Development Authority), William Mendelhall, or the State Auditors Office officials relating to the visit to TGF Office to discuss Change Order No. 1 and Change Order No. 2 and project costing after plant closed.

ff. Any accompanying verifications made by Chance Carter or Dusty Hinton that accompanied The Facility Group invoices to the Community Bank each month.

gg. Any notes, summaries, documents or memos The Facility Group meeting with Lt. Governor, Amy Tuck.

hh. Sean Carothers' knowledge or intent relating to Memorandum of Understanding text about the increased fees between the two (2) Sean Carothers' contracts.

ii. Any training manuals or step up plans prepared by Richard Hall or the Mississippi Development Authority or Community Bank that showed his prior proper planning for start up.

jj. Any reports received by Mississippi Development Authority or Community Bank on the design and construction of the plant that were advantageous to the marketability of the plant.

kk. Written or oral response from Aiso Eglen's bonding company relating to its release from the performance guarantee portion of P&P Bond.

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ll. Notes or summaries of Lester Spell interviews relating to The Facility Group and his support of Richard Hall and Sean Carothers.

mm. Notes reflecting Wyman Jones' views regarding funding Change Order No. 1 and Change Order No. 2.

nn. Notes, summaries or documents relating to Sean Carothers' estimates for the whole project, including his fees, insurance and soft cost itemization, including but not limited to his takeover proposal which he would not guarantee.

oo. Documents relating to Sean Carothers' change order requests for time extensions and justifications for same.

pp. All notes, documents, or memos relating to Mississippi Development Authority or Community Bank supporting the sale of the plant, including but not limited to, build drawings, questions on the real need for rendering plant, and waste treatment capacity issues.

qq. All notes, documents, correspondence or memos of Richard Hall relating to his requests for line of credit financing from GE Capitol.

Detailed Requests for Impeachment Material

a. Any and all records and information revealing prior criminal convictions or guilty verdicts or juvenile adjudications, including, but not limited to, relevant "rap sheets" of each witness the Government intends to call at trial.

b. Any and all records and information revealing misconduct, criminal acts or bad acts (whether or not charged) of any witness the Government intends to call at trial.

c. Any and all considerations or promises of consideration given during the course of the investigation or prosecution of this matter by any law enforcement officials, including prosecutors, agents, police, or informers, to or on behalf of any witness, including, but not limited to Richard Hall, Sean Carothers, and Robin Williams, the Government has interviewed or intends to call at trial, or any such consideration or promises requested by such witness, or any such consideration expected or hoped for by any such witness at any future time. Such "consideration" refers to anything that arguably could be of value or use to a witness or a witness' employer, including, but not limited to: (i) formal or informal, direct or indirect leniency, favorable treatment, or recommendations, or other assistance with respect to any pending or potential criminal, parole, probation, pardon, clemency, civil, administrative, or other matter involving the state or federal Government, or any other matter involving the state or federal Government, any other authority, or other parties; (ii) civil, criminal, or tax immunity grants to a witness; (iii) reductions in or agreements not to assess any tax liabilities,

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interest or penalties; (iv) payments of money, rewards or fees, witness fees, and special witness fees; (v) provisions of food, clothing, transportation, legal services or other benefits; (vi) letters to anyone informing the recipient of a witness' cooperation; (vii) recommendations concerning federal aid or benefits; (viii) promises to take affirmative action to help the status of a witness in a profession, business, or employment, or promises not to jeopardize such status; (ix) aid in efforts in securing or maintaining the business or employment of a witness; and (x) anything else that arguably could reveal an interest, motive or bias in a witness in favor of the prosecution or against the Defendant, or act as an inducement to testify or to color the witness' testimony.

d. Any and all statements - formal and informal, oral or written, - by the prosecution, its agents and representatives to any person (including counsel for such persons) whom the Government has interviewed or intends to call as a witness at trial pertaining in any way to the possibility, likelihood, course or outcome of any Government action - state or federal, civil or criminal - against the witness, or anyone related to the witness.

e. Any and all threats, express or implied, direct or indirect, or other coercion directed against any witness whom the Government has interviewed or intends to call at trial, or anyone related to the witness, with the purpose or effect of inducing testimony favorable to the Government or suppressing testimony favorable to any Defendant; criminal prosecutions, investigations, or potential prosecutions pending, threatened or which could be brought against any such witness, or anyone related to the witness; any probationary, parole or deferred prosecution status of any such witness, or anyone related to the witness; and any civil, Tax Court, Court of Claims, administrative, or other pending or potential legal disputes or transactions involving any such witness, or anyone related to the witness, and the state or federal governments, or over which the state or federal governments has real, apparent or perceived influence.

f. A list of any and all requests or demands made to the Government by, or on behalf of, any witness whom the Government intends to call at trial (regardless of whether or not the Government has agreed to such request or demand or to provide any favorable action to that witness).

g. All evidence of any negotiations between the Government and any witness for any favorable treatment or other consideration, to be imparted to the witness or any other party, in exchange for the witness' testimony, statements, or other aid provided to the Government in the Government's investigation of any case.

h. Any correspondence or memoranda detailing negotiations, including all offers, proposals and counteroffers between any AUSA regarding favorable treatment, consideration, lesser charges, agreement not to press charges, the prosecution, sentencing or location or length of incarceration of Robin Williams, Sean Carothers, or Richard Hall.

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i. Any documents or memoranda detailing any favorable treatment or other considerations given by Mississippi state prosecutors to Richard Hall, Sean Carothers, Robin Williams or other person, in exchange for any testimony, statements, or other aid furthering either the State of Mississippi's or the Government's investigation of the Mississippi Beef Processors Project.

j. Any information or documents tending to establish that Richard Hall, (1) paid his father or mother related to the Mississippi Beef Processors Project, (2) paid his wife related to the Mississippi Beef Processors Project, (3) paid anyone that did not perform work on the Mississippi Beef Processor Project, or (4) paid himself – regardless of the work done, including all money paid from project funds.

k. All documents and other evidence regarding drug and alcohol usage or dependency by any individual the Government intends to use as a witness at trial, including, but not limited to, records relating to treatment of such individual in any federal, state, territorial, city or military drug or detoxification program.

l. All documents and other evidence regarding any physical or mental disease, disability, or disorder affecting any individual the Government intends to use as a witness at trial, including but not limited to records of hospitalization or other treatments for a physical or mental disease, disability, or disorder.

m. Any evidence not otherwise listed that reflects or evidences the motivation of any witness to cooperate with the Government or reflects or evidences the competency or credibility of the Government's witness or the witness' bias or hostility against any of the Defendants.

n. A list of all other judicial proceedings involving a criminal matter in which any person who is a potential prosecution witness in this action participated as a witness, was identified as an unindicted co-conspirator or an aider and abettor, or was charged as a Defendant.

o. Any statements or documents, including, but not limited to, Grand Jury testimony made or executed by any potential prosecution witness at the trial in this action which the prosecution knows, or through reasonable diligence should have reason to know, are false.

p. The existence and identification of each occasion on which any witness, including any witness who is or was an informer, accomplice, co-conspirator, or expert, has testified in any judicial or administrative proceeding, before the Grand Jury, any court, or other tribunal or body, or otherwise has given a statement regarding any of the Defendants, the investigation or the facts of this case.

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q. Any written or oral statements, whether or not reduced to writing, made by any potential prosecution witness, which in any way contradicts or is inconsistent with or different from other oral or written, statements he or she has made or his or her anticipated trial testimony.

r. Any written or oral statements, whether or not reduced to writing, made to the prosecution, its agents, or representatives by any individual, whether or not that individual is or may be a witness, which in any way contradict, or are inconsistent with or different from any statements made by a potential prosecution witness or the anticipated trial testimony of any potential prosecution witness, and the name and address of the individual making any such statement.

s. Any requests prepared by the prosecution for permission to grant immunity or leniency to any witness, whether or not such request was granted and whether such requests were granted.

t. Any statements read or given by the Government to the Departments of Pretrial Services or Probation in connection with the prosecution or conviction of any prosecution witness or potential prosecution witness.

u. Copies of all letters or memoranda written to the court in connection with the sentencing of any potential prosecution witness.

v. Any and all other records and/or information that arguably could be helpful or useful to the defense in impeaching or otherwise detracting from the probative force of the prosecutor's evidence.

w. Any of the requests in this letter are also intended to apply to all non-witness declarants pursuant to Rule 806.

x. Copies of any and all records of law enforcement or other Governmental agencies reflecting intra departmental disciplinary action taken against any law enforcement or agency official who will testify in this proceeding, including all such records from any Governmental agency for which the witness previously worked.

y. Copies of any and all records of any law enforcement or other Governmental agency reflecting any commendations, awards, or recognition of any kind received by, or requests for any commendations, awards, or recognition of any kind made by, any Government agent or law enforcement officer for any work, action or conduct undertaken in connection with the investigation and prosecution of this case.

z. All letters, e-mails, correspondence, facsimilies, messages, reports, memoranda or other writings, and the substance of all oral communications, between any AUSA or the U. S. Attorney and any representative of the State of Mississippi (either with the Attorney

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General's Office, a local District Attorney, or other State prosecutor, or with a representative of the State Auditor's Office) concerning the lessening, avoidance, or dropping of any State charge, or the decision not to charge, or the location or length of incarceration of or for Sean Carothers, Richard Hall, Robin Williams, or any company, relative, employee or family member of or affiliated with Messrs. Carothers, Hall or Williams.

aa. All letters, e-mails, correspondence, facsimilies, messages, reports, memoranda or other writings, and the substance of all oral communications, concerning any decision not to debar or suspend Carothers Construction or any of its employees, subsidiaries or affiliates, or agents from either state or federal contracts.

Each of these requests calls for all responsive items within the possession, custody, or control of the Government, or items the Government knows to exist or could know to exist by the exercise of reasonable due diligence.

Each request is of a continuing nature and calls for supplementation as soon as the Government discovers additional responsive evidence, information, or material.

We also request that the Government preserve and maintain all relevant notes, reports and recordings prepared by or for Government agents or prosecutors, as well as any document, paper, tangible object, tape recording, or other potential item of evidence which is not or may hereafter come within the Government's possession, the production of which is requested in this letter.

Bill of Particulars

The Defendants request a Bill of Particulars as to the following matters in order to prevent prejudice to their trial preparation and to prepare for trial. Although we seek clarification and specificity through a Bill of Particulars, we nonetheless request that the indictment be dismissed due to the surplusage, vagueness, and indefinite nature of the allegations. Our request is not intended and does not suggest that the defects in the indictment can legally be cured merely by a Bill of Particulars

The Indictment Generally: Use of Indefinite Terms

The term "THE FACILITY GROUP" is given three different definitions in the Indictment. First, THE FACILITY GROUP is used as a reference to the corporate defendant, FACILITY HOLDING CORP., as shown in Count 1, ¶ 1(d). Second, the term "THE FACILITY GROUP" is used in a collective sense in Count 1 but without reference to C. K. Morehead, as shown in Count 1, ¶ 2. Third, the same term "THE FACILITY GROUP" is also used in a collective sense in Count 2, this time including C.K. Morehead, as shown in Count 2, ¶2.

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To add to the confusion, the Indictment also refers to "TFG," as shown in Count 1, ¶2. Further, THE FACILITY GROUP is also referred to as FCMI in Count 1, ¶ 12. Paragraphs 2 and 7 of Count 1 suggests that Robert L. Moultrie is the Chairman and Chief Executive Officer of all of the other six (6) Defendants and ¶ 2 suggests the Nixon E. Cawood is the Chief Operating Officer of all of the other six (6) Defendants.

This changing and inconsistent use of the same term is extremely confusing and ambiguous. Accordingly, the Defendants are deprived of clear and adequate notice of the charges or acts with which each of them is charged.

For these reasons, we believe the Indictment to be fatally defective, and we ask that the Government voluntarily dismiss.

While we do not believe that a Bill of Particulars can cure this fatal defect, should you decide to provide a Bill of Particulars, rather than dismiss, here is our alternative request:

1. With regard to the following paragraphs of the Indictment, specify whether use of the term "THE FACILITY GROUP" refers to only the corporate defendant, Facility Holding Corp., or which of each of the seven (7) Defendants are referred to in:
 - A. Count 1, ¶'s 2, 6, 7, 10, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42.
 - B. Count 2, ¶'s 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17 18, 19, 20, 21, 23, 24 and 25.
 - C. Paragraphs 2 in Counts 3 through 16.
2. In the paragraphs above, where the term THE FACILITY GROUP refers to any of the Defendants, describe the acts or omissions alleged against each Defendant. Such clarification is necessary in order for each Defendant to be on notice of the acts alleged to have been committed.
3. State what "TFG" stands for and what specific Defendant(s) "TFG" is meant to refer to throughout the Indictment.
4. Where "TFG" refers to any of the Defendants, describe the acts or omissions alleged against each Defendant. Such clarification is necessary in order for each Defendant to be on notice of the acts alleged to have been committed.

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5. State what "FCMI" stands for and what specific Defendant(s) "FCMI" is meant to refer to throughout the Indictment.
6. Where "FCMI" refers to any of the Defendants, describe the acts or omissions alleged against each Defendant. Such clarification is necessary in order for each Defendant to be on notice of the acts alleged to have been committed.

Bill of Particulars specific to Count 1

Count 1 of the Indictment appears to charge in Count 1, ¶ 2, a conspiracy to bribe a public official, alleging "Defendants, did knowingly and willfully conspire . . . to corruptly give, offer and agree to give things of value . . . with intent to influence and reward . . . in violation of [18 U.S.C. § 666(a)(2)]" However, the inclusion of the factual allegations set forth in Count 1 ¶'s 19, 23, 24, 41 and 42 alleging fraudulent submission of invoices, makes it unclear whether Count 1 also charges a conspiracy to submit false invoices, such that clarification of the allegations set forth in Count 1 is necessary to prevent prejudice or unfair surprise to the Defendants.

1. State whether Count 1 charges only a conspiracy to bribe in violation of 18 U.S.C. § 666(a)(2) [at ¶ 2 of Count 1] or whether it also charges a conspiracy to submit false invoices to be reimbursed for campaign contributions and expenses [at ¶'s 19, 23,24, 41, and 42 of Count 1].

Count 1, ¶ 2 (near the bottom of page 2) of the Indictment, alleges that the Defendants (other than Charles K. Morehead) acted "with intent to influence *and* reward the public official..." [Emphasis added] However, 18 U.S.C. § 666(a)(2) says it is a crime to corruptly give, offer, or agree to give anything of value to any person, "with intent to influence *or* reward ..." [Emphasis added] The verbs "to influence" and "to reward" are mutually exclusive because of the disjunctive word "or." Accordingly, Count 1, ¶ 2 is ambiguous such that clarification of the paragraph is necessary to prevent prejudice and unfair surprise to the Defendants.

2. State whether Count 1 alleges a conspiracy to influence the "public official" or a conspiracy to reward the "public official."
3. Count 1, ¶ 2 states that the defendants "did knowingly and willfully conspire with each other and with **others known and unknown to the Grand Jury.**" State the identity of the "others known . . . to the Grand Jury" and state the specific acts or omissions committed by them that shows they conspired with the Defendants to violate 18 U.S.C. § 666(a)(2).

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4. Count 1, ¶ 27 alleges that “an employee of THE FACILITY GROUP submitted an additional proposal . . .” State the identity of the employee alleged to have submitted the additional proposal.
5. Paragraph 31 of Count 1 refers to “THE FACILITY GROUP was made agent...” Please explain how and why “THE FACILITY GROUP was made agent...”
6. Name of all individuals the Government will allege at trial where co-conspirators in the conspiracy as to Count One of the Indictment.
7. Count 1, ¶ 9 alleges that “the public official told an employee of Carothers Construction . . .” and that “the public official then met alone with Sean Carothers to discuss Carothers’ proposal.” Identify the employee referred to in this allegation.
8. State what, if anything, else is alleged to have been discussed during this event alleged in Count 1, ¶ 9 and referred to above.
9. Count 1, ¶ 13 alleges that Robert L Moultrie and Nixon E. Cawood instructed “employees . . . to issue personal checks payable to the public official.” Identify each employee instructed to issue such personal checks and identify which of the defendants so instructed the employee.
10. Count 1, ¶ 19 alleges that invoices were submitted for the purpose of recouping (A) campaign contributions by the PAC and (B) reimbursing employees who had made their own campaign contributions. Identify which items in which invoices were false and made false for the purpose of recouping this money.
11. For each item in the invoices identified above, further identify to which campaign contribution made by the PAC or to which employee reimbursement the identified false invoice was intended to recoup.

Bill of Particulars specific to Counts 2-16

Count 2, ¶ 2 refers to “private companies and persons who supplied services and products to the Mississippi Beef Processors plant . . .”

1. Identify all of the “private companies and persons,” referred to in Count 2, ¶ 2.

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2. Paragraph 4 of Count 2, is contradictory in that it alleges both that THE FACILITY GROUP was to be compensated "at cost" for its services, but also in a range of \$2.5 million to roughly \$3.021 million for those services. Therefore, this paragraph alleges two contradictory descriptions of the compensation owed to THE FACILITY GROUP by the terms of the contract. State whether the Indictment alleges that the contract provides for THE FACILITY GROUP to be compensated for its services at cost or whether the contract provides for such at cost compensation to be in the range of \$2.5 million to \$3.021 million.
3. Paragraph 15 of Count 2 refers to "another employee." Identify that "other employee."
4. Paragraph 17 of Count 2 refers to "employees." Identify all of those employees.
5. Paragraph 6 of Count 2 refers to "overbilling." Please identify how such "overbilling" took place, who participated or was involved or responsible for such "overbilling," when such "overbilling" took place, and how such "overbilling" allegedly violated the Project Management Agreement.
6. Paragraph 7 of Count 2 refers to "false labor billings." Please identify how such "false labor billings" took place, who participated or was involved or responsible for such "false labor billings," when such "false labor billings" took place, and how such "false labor billings" allegedly violated the Project Management Agreement.
7. Paragraph 8 of Count 2 refers to "change orders." Please identify how such "change orders" took place, who participated or was involved or responsible for such "change orders," when such "change orders" took place, and how such "change orders" allegedly violated the Project Management Agreement.
8. Paragraph 19 of Count 2 refers to "approximately \$2,000,000 for 'Services Compensation' in excess of THE FACILITY GROUP'S actual costs." Please explain how the figure "approximately \$2,000,000" was calculated, and how it was "in excess of THE FACILITY GROUP'S actual costs."
9. Paragraph 20 of Count 2 refers to "contingencies." Please identify how such "contingencies" took place, who participated or was involved or responsible for such "contingencies," when such "contingencies" took place, and how such "contingencies" allegedly violated the Project Management Agreement.

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10. Describe the fiduciary relationship alleged to exist between these “private companies and persons” and each of the Defendants.
11. State the acts and omission through which each Defendant is alleged to have defrauded, by submission of fraudulent requests for payment, (1) “private companies and persons who supplied services and products to the Mississippi Beef Processors plant,” (2) the State of Mississippi and (3) the citizens and taxpayers of Mississippi.
 - a. We would ask that you voluntarily strike the reference to the citizens and taxpayers of Mississippi.
12. State the acts and omissions of each Defendant alleged to defrauded the above names private companies and persons.
13. State whether Counts 2 through 16 of the indictment allege fraud on the part of each defendant through a theory of deprivation of honest services, pursuant to 18 U.S.C. § 1346.
14. State whether Counts 2 through 16 of the indictment allege fraud on the part of each defendant through a theory of deprivation of honest services, pursuant to 18 U.S.C. § 1346.
15. State the names of all individuals the Government will allege at trial were co-conspirators in the conspiracy as to Count Two of the Indictment.

Alleged Fraudulent Billing under Counts 2 through 16

1. State how each request for payment constituted fraud in Counts 2 through 16 of the Indictment, identifying what particular aspects of each request for billing were fraudulent, and what conduct engaged in by each Defendant caused the billing to be fraudulent.

The indictment never particularizes how or why each of the alleged acts of mail fraud was fraudulent. There is no specific allegation as to what aspects of each requested payment was fraudulent, nor are there any allegations as to who caused the requests for payment to be fraudulent.

Inclusion of Count 1 into Counts 2 through 16

1. State whether Counts 2 through 16 only charge a scheme to defraud in violation of 18 U.S.C. §§ 1341 and 2.

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Counts 2-16 explicitly charge a scheme to defraud in violation of 18 U.S.C. §§ 2 and 1341, but each of these Counts also incorporates ¶¶ 1-42 of Count 1, which allege a conspiracy to bribe in violation of 18 U.S.C. § 371. It is unclear why the entirety of Count 1, including its charge of conspiracy to bribe in violation of 18 U.S.C. § 371, is included in Counts 2-16, where the only offense charged is mail fraud.

Sincerely,

/s/ in person

Thomas H. Freeland, IV
Mississippi Bar No. 5527

/s/ Richard H. Deane, Jr.
Richard H. Deane, Jr.

/s/ Jerome J. Froelich, Jr.
Jerome J. Froelich, Jr.

/s/ Craig A. Gillen
Craig A. Gillen

Thomas D. Bever by
Thomas D. Bever *Anthony L. Cochran*

cc: Amanda B. Barbour, Esq.
James B. Tucker, Esq.
John Colette, Esq.
Larry Little, Esq.