

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CRIMINAL NO. 3:08CR014
)	
ROBERT L. MOULTRIE, NIXON E. CAWOOD,)	
CHARLES K. MOREHEAD, FACILITY HOLDING)	
CORP., d/b/a THE FACILITY GROUP,)	
FACILITY MANAGEMENT GROUP, INC.,)	
FACILITY CONSTRUCTION MANAGEMENT, INC.,)	
and FACILITY DESIGN GROUP, INC.,)	
)	
Defendants.)	

**MOTION FOR DISCOVERY AND FOR DISCLOSURE OF MATERIAL,
EXCULPATORY OR IMPEACHING EVIDENCE OR INFORMATION,
AND GENERAL AND SPECIFIC DISCOVERY
BRADY AND GIGLIO REQUESTS**

NOW BEFORE THE COURT come the Defendants, Robert L. Moultrie, Nixon E. Cawood, Charles K. Morehead, Facility Holding Corp. d/b/a The Facility Group, Facility Management Group, Inc., Facility Construction Management, Inc., and Facility Design Group, Inc., by and through undersigned counsel, and, pursuant to Federal Rule of Criminal Procedure 16 and *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963), move for an order directing the Government to produce the discovery materials described herein.

I. INTRODUCTION

On April 4, 2008, the Defendants sent to Assistant United States Attorneys William C. Lamar and James D. Maxwell, II, a discovery letter (attached hereto as Exhibit A) that specifically requested the Government to produce discoverable materials necessary for the Defendants to prepare for trial. Upon receipt of the letter, the Government promised to the

Defendants a prompt answer to each and every item contained in the discovery letter, which as of the date of the filing of this motion has yet to materialize.

The Defendants have extended to the Government numerous courtesies, and have refrained from filing the instant motion upon request of the Government for more time to answer the letter. Despite the Defendants' overture, as of the date of filing, the Government has failed to fully answer the discovery letter as promised. The materials that the Government has produced to the Defendants do not constitute a complete answer to the Defendants' discovery letter and are unsatisfactorily incomplete. Furthermore, the fact that the Government will allow defense counsel to search through some 12 boxes of documents, does not satisfy their obligation under Federal Rule of Criminal Procedure 16 to provide discovery to the Defendants. *See United States v. Poindexter*, 727 F. Supp. 1470, 1484 (D.D.C. 1989) (A party may not take a "broad brush approach" to discovery, identifying "several thousand pages, any of which it 'may' rely on at trial."); *United States v. Turkish*, 458 F. Supp. 874, 882 (S.D.N.Y. 1978) (Government may not "bury [] the defendants in paper' by merely . . . making all of the documents available . . .").

In light of the fact that the trial is scheduled for less than two months from the date of filing, the Defendants can no longer afford to wait for the Government to produce the discovery materials that they are required, by law, to produce and that the Defendants have requested of them. The production of the requested materials is critical to the Defendants' preparation of a defense and to putting the Defendants on notice of Federal Rule of Evidence 801(d)(2) and hearsay issues that may arise before or at trial.

Accordingly, the Defendants file this motion to compel discovery of the materials requested below. The requests contained in this motion are all of the materials requested in the

Defendants' discovery letter (Ex. A) that have not yet been satisfactorily produced by the Government.

II. ARGUMENT AND CITATION OF AUTHORITIES

A. The Government's Obligations Pursuant to *Brady v. Maryland*

As the Government should recognize, its discovery obligations extend well beyond the scope of Rule 16 alone. As established by the Supreme Court in *Brady v. Maryland*, the failure by the prosecution to disclose evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. 373 U.S. 83, 87, 83 S.Ct. 1194 (1963). Thus, any evidence of an exculpatory nature should be disclosed pursuant to *Brady*. See *United States v. Yizar*, 956 F.2d 230 (11th Cir. 1992) (remanding for an evidentiary hearing, holding that disclosure, pursuant to *Brady*, of "testimony from... co- defendant at the scene of the arson stating that [defendant] was innocent, may have been sufficient to create a reasonable doubt in the minds of the jury that [defendant] was actually guilty"). The duty of disclosure under *Brady* further extends to impeachment evidence. See *Strickler v. Greene*, 527 U.S. 263, 280, 119 S.Ct. 1936 (1999) citing *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375 (1985). "Exculpatory evidence" is "substantive evidence relating to a defendant's guilt or innocence or in mitigation of what otherwise would be guilty conduct." *United States v. Thevis*, 84 F.R.D. 47, 52 (N.D.Ga. 1979). Impeachment evidence comprises evidence affecting the credibility of witnesses: "[i]n the case of impeachment evidence, a constitutional error may derive from the government's failure to assist the defense by disclosing information that **might** have been helpful in conducting the cross-examination." *United States v. Scheer*, 168 F.3d 445, 452 (11th Cir. 1999) (emphasis

added) *citing Bagley*, 473 U.S. at 678; *see also Giglio v. United States*, 405 U.S. 150, 154, 92 S.Ct. 763 (1972); *Morrow v. Dretke*, 367 F.3d 309 (5th Cir. 2004).

Most critical for the Government's obligations, "[d]isclosure of documents and tangible objects which are **'material'** to the preparation of the defense is required under the rule of *Brady v. Maryland*." *Jordan*, 316 F.3d at 1250 n.73 (emphasis added) *quoting* Fed.R.Crim.P. 16, Notes (1974 Amends.). Evidence is "material" for the purposes of *Brady* disclosure if it "**would be useful in obtaining further [favorable] evidence.**" *Giles v. Maryland*, 386 U.S. 66, 74, 87 S.Ct. 793 (1967) (emphasis added); *see also United States v. Fernandez*, 136 F.3d 1434, 1438 (11th Cir. 1998); *United States v. Arnold*, 117 F.3d 1308, 1317 (11th Cir. 1997); *Hays v. State of Ala.*, 85 F.3d 1462, 1497-98 (11th Cir. 1996); *United States v. Newton*, 44 F.3d 913, 918 (11th Cir. 1994); *United States v. Spagnuolo*, 960 F.2d 990, 994 (11th Cir. 1992) (cit. omitted).

In its April 4, 2008, discovery letter, the Defendants specified for the Government what they considered "material" for the purposes of discovery saying:

The term "material to the defense" specifically includes, but is not limited to, any evidence which [constitutes,] 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 Superseding Indictment] and any Defendant;
- b. There was no agreement by "the public official" [alleged in ¶ 2 of Count 1 of the Superseding 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 Superseding Indictment;
- c. No campaign contribution was given to "the public official" [alleged in ¶ 2 of Count 1 of the Superseding 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 Superseding 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 Superseding 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 ¶ 26 of Count 2 of the Superseding 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 ¶ 15 of Count 1 of the Superseding Indictment];

....

- 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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- 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 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 [reflecting] 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 [Anco-Eglin] bonding company relating to its release from the performance guarantee portion of P&P Bond.
- 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.

April 4, 2008, Letter to William C. Lamar and James D. Maxwell, II, Exhibit A, p. 4-6.

The disclosure requirements of *Brady* extend to potential exculpatory or impeaching evidence within other evidence. *See Arnold*, 117 F.3d at 1317 (surveillance tapes held to contain *Brady* material); *Ogle v. Estelle*, 641 F.2d 1122, 1125 (5th Cir. 1981) (*Brady* violation found because suppressed Federal Bureau of Investigation reports contained favorable impeachment evidence). Accordingly, “*Brady’s* disclosure requirements extend to materials that, **whatever their other characteristics**, may be used to impeach a witness,” *Strickler*, 527 U.S. at 282 n. 21, even if the materials also contain allegedly “inculpatory” evidence, *id.* (emphasis added) *citing Bagley*, 473 U.S. at 676.

As under Rule 16, the Government further “has a duty to learn of **any** favorable evidence known to the others acting on the government’s behalf in this case, including the police.” *Strickler*, 527 U.S. at 281 (emphasis added) *citing Kyles v. Whitley*, 514 U.S. 419, 438, 115 S.Ct. 1555 (1995). This includes evidence known **only** to law enforcement officers, and not the prosecuting attorney. *See Strickler*, 527 U.S. at 280-81 *citing Kyles*, 514 U.S. at 438; *see also United States v. Diaz-Munoz*, 632 F.2d 1330, 1334 (5th Cir. 1980) (holding that government had duty to search CIA files since the nature of charges and defendant’s alleged conduct supported inference that CIA might have materials); *United States v. Auten*, 632 F.2d 478, 481 (5th Cir. 1980) (holding that government has duty to seek “out information readily available to it” such as information regarding witness’ criminal record); *Martinez v. Wainwright*, 621 F.2d 184, 186-87 (5th Cir. 1980) (finding *Brady* violation where state prosecutor was unaware that the FBI rap sheet was in the possession of a state medical examiner); *United States v. Antone*, 603 F.2d 566,

569-70 (5th Cir. 1979) (imputing knowledge of state investigators to federal prosecutors in determining whether there was a *Brady* violation where there was a joint investigative task force); *United States v. Deutsch*, 475 F.2d 55 (5th Cir. 1973), *overruled on other grounds*, *United States v. Henry*, 749 F.2d 203 (5th Cir. 1984) (government had duty under *Brady* to obtain exculpatory information in possession of the United States Postal Service). “[A] prosecutor may not ‘avoid disclosure of evidence by the simple expedient of leaving relevant evidence to repose in the hands of another agency while utilizing his access to it in preparing his case for trial.’” *United States v. Brazel*, 102 F.3d 1120, 1150 (11th Cir. 1997) (citation omitted).

“[T]he prosecution’s responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable.” *Kyles*, 514 U.S. at 438. Similarly, “[w]hen the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable.” *Agurs*, 427 U.S. at 111. This is a result of the fact that “the more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the non-disclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption.” *Bagley*, 473 U.S. at 682-83. “[T]he prudent prosecutor will [therefore] resolve doubtful questions in favor of disclosure.” *Id.*, at 108. Accordingly, The Government’s failure to fully respond to the Defendants’ discovery letter in the three (3) months since the Government received the letter is clearly unacceptable according to U.S. Supreme Court and other federal precedent.

III. GENERAL AND SPECIFIC *BRADY* REQUESTS

Pursuant to the foregoing controlling law, the Defendants hereby request that the Government produce to the them, and their counsel, any and all of the evidence or information

requested below in the possession, custody, or control of the Government of the United States of America, or any armed service, branch, department, agency, bureau or other subdivision thereof, or any official, attorney, officer, agent or employee thereof, or which is obtainable by any such entity or individual. Just as used in the April 4, 2008 discovery letter, 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"), all of whom formed a prosecutive team in this case. *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.

The use of the terms or words "evidence and information" shall be construed to include any and all documents, tangible things, video or audio recordings, and all other information, regardless of the form in which such evidence or information is kept or stored. The use of the disjunctive term "or" shall be construed as the use of the conjunctive term "and" and *vice versa*.

The Defendants show that this production is essential to the Defendants' 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. The Defendants view the following requests as seeking information which the Government is required by law to provide to the Defendants, and which further must be provided consistent with

the Defendants' constitutional right to due process and to adequately prepare a defense. Pursuant to these instructions, the Defendants hereby request:¹

A. Detailed Requests for Exculpatory Material

1. 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.
2. 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;

¹ Almost all of these items were specified in the April 4, 2008 letter, attached hereto as Exhibit A.

- 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.
 - 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.
3. 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 Superseding Indictment, and the substance of that information.

4. 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 Superseding 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.
5. Any and all phone, credit card, and email records in the Government's possession, custody, or control, to or from the office phone, home phone, cell phone, personal pager, home computer, or work computer of the following people: (a) Robin Williams, (b) Richard N. Hall, or (c) Sean Carothers.
6. 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 Robert L. Moultrie was not involved in the scheme to defraud alleged in Counts 2 through 16.
7. 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 ¶ 13 of Count 1 of the Superseding Indictment.
8. 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 ¶ 15 of Count 1 of the Superseding Indictment.

- 9.** 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 ¶ 34 of Count 1 of the Superseding Indictment.
- 10.** 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 ¶ 13 of Count 1 of the Superseding Indictment.
- 11.** 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 ¶ 15 of Count 1 of the Superseding Indictment.
- 12.** 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 ¶ 34 of Count 1 of the Superseding Indictment.
- 13.** 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:

- 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," (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;

- 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;

xx. 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.
- 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;

xxi. 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.

14. 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;
- 15.** The presentence reports of Richard Hall, Robin Williams, Sean Carothers or any other witnesses who may be called by the Government to testify.
- 16.** 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.
- 17.** 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 (a) Carothers Construction, or (b) Sean Carother's father or any other family member, relative or employee of Carothers Construction.
- 18.** 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.

- 19.** 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.
- 20.** 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.
- 21.** 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.
- 22.** 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.
- 23.** Any and all documentation regarding the recent case involving Blue Cross Blue Shield's reimbursement of employee contributions to the state insurance commissioner.
- 24.** Any report reflecting, explaining, reporting or opining why the Mississippi Beef Processors plant failed.
- 25.** 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.

26. Any oral or written summaries of Leland Speed and/or Terry Hudson requesting Nixon E. Cawood to help sell the Mississippi Beef Processors plant.
27. 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.
28. 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.
29. 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.
30. 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.
31. Any accompanying verifications made by Chance Carter or Dusty Hinton that accompanied The Facility Group invoices to the Community Bank each month.
32. Any notes, summaries, documents or memos The Facility Group meeting with Lt. Governor, Amy Tuck.
33. Sean Carothers' knowledge or intent relating to Memorandum of Understanding text about the increased fees between the two (2) Sean Carothers' contracts.
34. 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.

35. 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.
36. Written or oral response from Anco-Eglin's bonding company relating to its release from the performance guarantee portion of P&P Bond.
37. Notes or summaries of Lester Spell interviews relating to The Facility Group and his support of Richard Hall and Sean Carothers.
38. Notes reflecting Wyman Jones' views regarding funding Change Order No. 1 and Change Order No. 2.
39. 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.
40. Documents relating to Sean Carothers' change order requests for time extensions and justifications for same.
41. 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.
42. All notes, documents, correspondence or memos of Richard Hall relating to his requests for line of credit financing from GE Capitol.
43. All materials given to the Government by Mr. Dennis Dickinson, on or about October 30 and 31, 2007, which contains information showing that The Facility Group was audited over several years by Mr. Dickinson and that there was never any adverse finding by the auditor in terms of The Facility Groups administration of its construction contracts and business. This includes, but is not limited to, copies of the documents relied upon by Mr. Dickinson in his

interview with United States Attorney James Maxwell before appearing before the Grand Jury, one of which is a spreadsheet whose identity the Defendants have yet to ascertain.²

B. Detailed Requests for Impeachment Material

1. 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.
2. 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.
3. 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

² This request is the only request contained in this motion that was **not** in the April 4, 2008 letter. The existence of these materials only became known to the defendants recently, and since they are exculpatory in nature they are requested in this motion along with materials already requested of the Government.

any tax liabilities, 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.

4. 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.
5. 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.

6. 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).
7. 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.
8. 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.
9. 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.
10. 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.

- 11.** 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.
- 12.** 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.
- 13.** 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.
- 14.** 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.
- 15.** 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.
- 16.** 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.

17. 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.
18. 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.
19. 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.
20. 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.
21. Copies of all letters or memoranda written to the court in connection with the sentencing of any potential prosecution witness.
22. 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.

- 23.** Any of the requests in this letter are also intended to apply to all non-witness declarants pursuant to Rule 806.
- 24.** 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.
- 25.** 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.
- 26.** 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 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.
- 27.** 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.

IV. PRAYER FOR RELIEF

For the aforementioned reasons, the Defendants respectfully request that this Court compel the Government to promptly produce the above requested materials. Such production is critical to the Defendants' preparation for trial and to prevent surprise at trial. The Defendants reasonably believe that the Government is obligated to make such a production pursuant to its obligations under 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.

The Defendants further request, pursuant to Fed.R.Crim.Pro. 16(c), that this Court order that each request made in the instant motion be of a continuing nature and calls for supplementation as soon as the Government discovers additional responsive evidence, information, or material.

Respectfully submitted this 10th day of July, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2008, I have caused a copy of the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following CM/ECF participant attorneys of record:

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