

**ATTACHMENT L  
CMR SERVICES CONTRACT TEMPLATE**

**MASTER AGREEMENT**

**BETWEEN THE**

**STATE PRESERVATION BOARD**

**AND**

**XXX**

**CONSTRUCTION MANAGER-AT-RISK**

This Master Agreement is effective this **X**th day of **XX, 20XX** (the "**Effective Date**"), by and between the Owner:

**State Preservation Board ("Owner")**

and Construction Manager-at-Risk/General Contractor

**XX ("Contractor")**

For services in connection with the Project known as

**Texas Capitol Roof Replacement and Rehabilitation (the "Project").**

The Contractor and Owner may be referred to as the Parties to this Agreement (the "**Parties**").

The Parties acknowledge Owner's Engineer Chuck Larosche with Wiss, Janney, Elstner Associates, Inc., shall serve as the architect/engineer of record for the Project (hereafter "**A/E**").

The Request for Qualifications (RFQ) for Construction Manager-at-Risk for the Texas Capitol Roof Replacement and Rehabilitation, issued **XX, 2021**, , and the Contractor's Responses to steps one and two of the RFQ, are attached by reference to further define and clarify the Project. If any terms of this Master Agreement conflict with those in the RFQ, this Master Agreement shall prevail.

Owner intends to construct the Project within a construction cost limit of fourteen million one and no/100 dollars (\$14,000,000.00). This sum is referred to as the Budgeted Construction Cost which is further defined in paragraph 2.1.

Owner and Contractor agree as follows:

## ARTICLE 1 SCOPE OF WORK

- 1.1 Contractor has overall responsibility for and shall provide Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the Contract Documents.
- 1.2 The Project shall be constructed in one phase for which Contractor shall provide both pre-construction and construction services, the latter to be defined and contracted for in a Guaranteed Maximum Price Proposal (GMP) to be executed by both Parties to incorporate the Work of each phase into this Master Agreement.

## ARTICLE 2 DEFINITIONS

The terms, words and phrases used in this Master Agreement have the meanings given in the 2015 Uniform General Conditions for the State of Texas Construction Contracts and the Supplementary Conditions to the 2015 Uniform General Conditions, and as follows:

- 2.1 **“Budgeted Construction Cost”** means the maximum monetary amount budgeted by Owner for all Construction Phase services, materials, labor and other work required of Contractor for completion of the Work in accordance with this Master Agreement. The Budgeted Construction Cost includes, without limitation, the general conditions costs, the Cost of the Work, the Construction Phase Fee and Contractor’s Contingency. The Budgeted Construction Cost may be adjusted by the Parties for changes in the scope of the Project before or after acceptance of a Guaranteed Maximum Price Proposal. The Budgeted Construction Cost does not include Owner’s Construction Contingency. The Owner may increase the Budgeted Construction Cost at the Owner's sole discretion if doing so is in the best interest of the Project or the State.
  - 2.1.1 **“Cash Flow Report”** – A report compiling the Work Progress Schedule and Schedule of Values to indicate anticipated cash payments required of the Owner throughout the Project.
- 2.2 **“Contract Documents”** (in addition to the definition provided in 1.13 of the UGC's) for the Master Agreement and any subsequent GMP signed by both Parties means this Master Agreement and all exhibits and attachments listed, contained or referenced in this Master Agreement, specifically including the 2015 Uniform General Conditions for the State of Texas Construction Contracts (UGC's) and the Supplemental and Special Conditions to the 2015 Uniform General Conditions and the Owner's Requirements as bound into the Project Manual entitled Texas Capitol Roof Replacement and Rehabilitation Documents **dated XX, 20XX**; the Drawings, Specifications, details and other documents developed by Owner’s CM or Owner’s other consultants, if any, and accepted by Owner which describe the Project; all Addenda issued prior to the Effective Date of this Master Agreement; the Guaranteed Maximum Price Proposal when accepted by Owner and executed by the Parties; all Change Orders documenting approved modifications issued after the Effective Date of this Master Agreement; and the HUB Subcontracting plan submitted by Contractor. These Contract Documents form the entire and

integrated contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

- 2.2.1 **“Contractor’s Contingency”** means a sum to protect the Contractor’s budget and Contractor’s Work Progress Schedule, including additional costs resulting from, but not limited to, subcontractor defaults, overtime, re-work, delays, commodity shortages (including but not limited to fuel, steel, cement), labor shortages, unusual weather and/or unavoidable casualties, or other causes, unless due to the gross negligence of the Contractor.
- 2.3 **“Construction Phase Fee”** means the amount set forth on Exhibit C and further detailed in Article 8.
- 2.4 **“Construction Phase Services”** means the coordination, implementation and execution of the Work required by this Agreement, which are further defined in Article 7.
- 2.5 **“Cost of the Work”** means the cost for all labor and materials to construct the Work as defined in the Contract Documents. Cost of the Work does not include contractor's fee or general conditions.
- 2.6 **“Direct Construction Cost”** means the Cost of the Work plus the general conditions costs, but with no fee added.
- 2.7 **“Guaranteed Maximum Price”** or **“GMP”** means the amount proposed by Contractor and accepted by Owner as the maximum cost to Owner for construction of the Project or a defined portion of the Project in accordance with this Master Agreement. The GMP includes Contractor’s Construction Phase Fee, the general conditions Cost, the Cost of the Work, and Contractor’s Contingency amount, as set forth in a GMP proposal.
- 2.8 **“General Conditions”** in upper case shall be the terms of the Contract outlining the agreed terms and conditions for management of the Contract. The General Conditions include the 2015 Uniform General Conditions for the State of Texas Construction Contracts and the Supplemental Conditions to the 2015 Uniform General Conditions, and the Special Conditions for construction of the Project, and are included in Exhibit A to this Master Agreement.
- 2.9 **“general conditions”** in lower case shall be the general requirements of the Contractor, including but not limited to the Contractor's on-site general management staff, office, and supplies, to manage and produce the Project. The costs for the Contractor's on-site personnel and field operations have been priced by the Contractor and are attached as Exhibit D. If, from time to time, these general conditions are in upper case, the term shall be reasonably inferred from its use in context.
- 2.10 **“General Conditions Cost”** means costs incurred and minor work performed by Contractor without the need for competitive bids/proposals as allowed under Texas Government Code 2166.2532. The maximum allowable general conditions cost payable to Contractor during the Construction Phase of the Project is set forth on Exhibit C and the allowable general conditions items are further described and limited by Section 10.1 of this Master Agreement.

- 2.11 **"Guaranteed Maximum Price or GMP"** means the total cost to the Owner under the Contract for the Work performed during the Construction Phase, which may include the cost of any approved Initial Construction Work approved by the Owner in writing.
- 2.11.1 **"Initial Construction Work"**- Work authorized by the Owner prior to the written acceptance by the Owner of the GMP proposal.
- 2.12 **"Master Agreement"** is this document which establishes the full scope of work including all Preconstruction and Construction services and establishes the means by which the GMP is proposed and accepted to formalize the cost of Construction.
- 2.13 **"Monthly Salary Rate"** means the amount agreed to by Owner that can be used on Applications for Payment throughout the Construction Phase to account for the actual monthly base salary and employer contributions costs (payroll burden) of Contractor's salaried personnel assigned to the Project as established in the general conditions cost. A Monthly Salary Rate must be established for each salaried person and must be approved in writing by Owner in advance of any Application for Payment for that person. The Monthly Salary Rate is for convenience only and any payments made for Contractor's personnel are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by Contractor for services performed. Monthly salary rates proposed in the general conditions cost shall not increase during the term of this Master Agreement without prior written consent of the Owner.
- 2.14 **"Pre-Construction Phase Services"** means the participation, documentation and execution of Contractor's Pre-Construction Phase deliverables as required by this Master Agreement and further defined in Article 5. These Pre-Construction Phase Services are limited in nature and duration and exclude Initial Construction Work. Pre-Construction Services are inclusive of all services provided prior to the Notice to Proceed with the exception of services directly required to execute Initial Construction Work.
- 2.15 **"A/E"** refers to the Owner's architect/engineer of record for the Project and its consultants.
- 2.16 **"Project Schedule"** means Owner information and milestones for the Project to be incorporated into the Work Progress Schedule by the Contractor.
- 2.17 **"Project Team"** means Owner, Owner Stakeholders, Contractor, **CM** and consultants, any separate contractors employed by Owner, and others employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated in writing by Owner and may be modified from time to time in writing by Owner.
- 2.18 **"Subcontractor"** means a person or entity which has an agreement with Contractor to perform any portion of the Work. The term Subcontractor does not include CMR or any person or entity hired directly by Owner.
- 2.19 **"Work"** (in addition to the definition provided in 1.45 of the UGC's) means the provision of all services, labor, materials, supplies, and equipment that are required of Contractor to complete the Project in strict accordance with the requirements of this Master Agreement. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders,

and any other work reasonably inferable from this Master Agreement. The term “reasonably inferable” takes into consideration the understanding of the Parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

- 2.19.1 **“Work Progress Schedule”** – CPM schedule created by the Contractor, which takes Owner requirements and Owner’s Preliminary Project Schedule into consideration, indicating the sequence of activities by which the Contractor intends to complete the Work in the time indicated in this Master Agreement. The Work Progress Schedule is the measure by which progress of the Work is measured.
- 2.20 **“Wage Rate”** (in addition to the definition provided in 2.2 of the UGC's) means the actual hourly wage of non-salaried persons performing work on the Project plus allowable employer contributions. The Worker Wage Rate for individual persons must be reasonable and customary for their industry, must equal or exceed the prevailing wage established by Owner which are attached as Exhibit E and must be approved in writing by Owner in advance of any Application for Payment for that person. All payments for non-salaried personnel working on the Project are subject to audit to determine the actual cost of the wages and allowable employer contributions incurred by employer for services performed for the Project.

### **ARTICLE 3 CONTRACTOR’S GENERAL RESPONSIBILITIES**

- 3.1 Contractor shall perform all services specifically allocated to it by the Contract Documents as well as those services reasonably inferable from the Construction Documents as necessary for completion of the Work and the Project. Contractor agrees to perform these services using its best efforts, skills, judgments and abilities.
- 3.2 Contractor shall contract directly with such subcontractors and suppliers as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with the applicable provisions of this Contract.
- 3.3 Contractor shall cooperate with CM and endeavor to further the interests of Owner and the Project. Contractor shall furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the interests of Owner and in accordance with the Work Project Schedule.
- 3.4 Contractor shall designate in writing a representative authorized to act on Contractor’s behalf with respect to this Master Agreement and the Project. That individual shall not be changed during the term of this Master Agreement without the prior written consent of the Owner, which consent shall not be unreasonably withheld.
- 3.5 Contractor shall work with the Owner to establish procedures for communication and coordination among the Project Team, Subcontractors, separate contractors, and others with respect to all aspects of the construction of the Project, and implement such procedures.

Contractor shall be responsible for communicating the status of the construction of the Project to the Owner in a timely manner.

- 3.6 Contractor shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner meeting and when requested.
- 3.7 Contractor shall provide and update the Work Progress Schedule routinely, such schedule to incorporate the Owner's Preliminary Schedule. If Owner elects to "fast-track" or develop the Project in multiple stages, Contractor shall organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific Budgeted Construction Cost, at Owner's discretion.
- 3.8 Contractor has identified those employees and other personnel that it will assign to the management of the Project. Within 10 days of the Effective Date of this Master Agreement, Contractor will provide a document to the Owner listing the Monthly Salary Rate for each of them which will be incorporated into this Master Agreement as Exhibit F. Contractor shall also identify any consultants that will be performing services for the Project. After execution of this Master Agreement by Owner, Contractor shall not remove or replace the persons or entities assigned to the Project except with Owner's written consent, which consent shall not be unreasonably withheld. Contractor shall not assign to the Project or contract with any person or entity to which Owner has reasonable objection. Contractor shall promptly update the list of persons and consultants if a change is required during the course of the Project.
- 3.9 Contractor shall be responsible for preparing copies of the Contract Documents needed for its use and that of any of its consultants or subcontractors for performing reviews, preparing cost estimates and GMP proposals, obtaining bids/proposals for the work and constructing the Project as set forth in this Master Agreement. Contractor shall also be responsible for maintaining a register of document distribution, and distributing documents to its consultants, subcontractors, bidders, proposers and plan rooms.
- 3.10 Owner's Policy on Participation by Historically Underutilized Business (HUB) is attached as Exhibit G. Contractor, as a provision of the Master Agreement, must comply with the requirements of the policy and adhere to the HUB Subcontracting Plans submitted for Pre-Construction Phase and Construction Phase Services. No changes to the HUB Subcontracting Plans can be made by Contractor without the prior written approval of Owner in accordance with the Policy.
- 3.11 The Contractor shall furnish its skill and judgment consistent with the industry standards and with due care in accordance with applicable federal, state and local laws and regulations.

#### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

- 4.1 The Owner shall manage the overall Project. Owner will identify a person as its Owner's Designated Representative (ODR) who is authorized to act on Owner's behalf with respect to the Project. The ODR shall render decisions on behalf of Owner promptly and furnish

information expeditiously in accordance with the Uniform General Conditions, so as to avoid unreasonable delay in the services or Work of the Contractor. The Owner designates Kevin M. Koch, AIA as the Owner's Project Manager and ODR and the Contractor's primary contact.

- 4.2 The Owner's Design Engineer, Wiss, Janney, Elstner Associates, Inc., shall provide the Construction Documents and the Construction Administration for the Project.
- 4.3 Owner shall provide the Budgeted Construction Cost and Project Schedule for the Project. The Budgeted Construction Cost provided by Owner shall be established with due consideration of separate contingencies for changes in the Project during construction and of other Project costs that are the responsibility of Owner. The general schedule will set forth Owner's plan for milestone dates and completion of the Project. The general schedule for this Project is found in the RFQ. The Owner shall periodically update the Budgeted Construction Cost. If the Owner significantly increases or decreases the scope in such a way that impacts the Budgeted Construction Cost, the Owner shall promptly notify the Contractor and CM. The Owner and CM, in consultation with the Contractor, shall thereafter agree to a corresponding change in the Project's scope and quality.
- 4.4 Owner, at its sole cost, will secure the services of environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.
- 4.5 Owner shall arrange and pay for testing of materials, structural, mechanical, chemical and other laboratory tests as required by the Construction Documents or by law or as otherwise agreed to by the parties.
- 4.6 Owner shall provide various materials to be integrated into the Work, subject to acceptance by the Contractor as noted in the Specifications.
- 4.7 Owner shall furnish all legal, accounting, auditing and insurance counseling services for the Owner as may be necessary for the Project.
- 4.8 Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of Contractor's services and of the Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work within the time limits prescribed by the Uniform General Conditions and with reasonable promptness after receiving the Contractor's written request for such information or services.
- 4.9 Owner may designate one or more construction inspectors who shall be given access to the Work. The provision of inspection services by Owner shall not reduce or lessen Contractor's responsibility for the Project. Contractor is fully and solely responsible for constructing the Project in strict accordance with this Master Agreement.

- 4.10 Owner shall have the right to reject any defective work on the Project. Should Contractor refuse or neglect to correct any such, Owner may have the Work corrected and recover all expenses incurred from Contractor on demand.
- 4.11 Owner shall provide sets of the Contract Documents and one digital copy to Contractor for its use in preparing GMP proposals, obtaining bids/proposals for the Work, and constructing the Project. Owner shall also make available to Contractor any supplemental Contract Documents such as addenda, equipment procurement packages, Requests for Information (RFI's) responses and change order documentation.
- 4.12 Owner shall provide reasonable access to the site.

## **ARTICLE 5 PRE-CONSTRUCTION PHASE SERVICES**

Pre-Construction phase services are to be provided prior to the GMP and shall be ongoing as they may relate to pre-construction services on the future phases of the Project. For pricing purposes, a fee has been identified on Exhibit C for Preconstruction Services prior to construction on site. Other pre-construction services are included in the general conditions cost in Exhibit D. Contractor shall perform the following Pre-Construction Phase Services:

### **5.1 GENERAL COORDINATION**

- 5.1.1 Contractor's Pre-construction Phase Services team shall attend Project Team meetings with Owner, Owner representatives, and CM at regularly scheduled intervals throughout the Pre-Construction Phase. Frequent Project Team meetings are anticipated prior to Owner acceptance of the GMP. Consideration will be given to online meetings to minimize travel time or utilize remote staff prior to start of construction.
- 5.1.2 Review and understand the standards and requirements in Owner's Specifications and perform all services in accordance with those standards and requirements.
- 5.1.3 Inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required.
- 5.1.4 Provide recommendations and information to the Project Team on: site usage; equipment and construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs; temporary Project facilities; equipment, materials and services for common use of Contractor and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; identifying and tracking the resolution of conflicts in the proposed Drawings and Specifications; methods of delivery of materials, systems, and equipment; and any other matters necessary to accomplish the Project in accordance with the Work Progress Schedule (as defined in section 5.3.1 below) and the Budgeted Construction Cost. The recommendations of the Contractor with respect to cost factors, preliminary budgets, and possible cost savings, are made solely in its capacity as a contractor and are



advisory only. Notwithstanding any such recommendations by the Contractor, the CM shall be solely responsible with respect to the design sufficiency of any such recommendations which are incorporated into the Work on the Project. The services to be provided by the Contractor, as set forth above, shall in no manner be construed to be professional design services.

- 5.1.5 Prepare a detailed preliminary Construction Schedule based on 5.1.4 above.
- 5.1.6 Assist Owner in directing the services of special consultants hired by Owner to develop additional information for the construction of the Project.

## 5.2 **Constructability Program**

- 5.2.1 Implement and conduct a constructability program to identify and document Project cost and schedule savings opportunities. The constructability program shall follow accepted industry practices and be approved by Owner. Whenever the term “value engineering” is used in conjunction with this Master Agreement or the Project, it has its commonly accepted meaning within the construction industry and does not imply the practice of professional engineering without a license. If any value engineering activities constitute the professional practice of engineering, then such activities shall be performed by an engineer licensed in Texas. The above-references services shall be subject to the limitations set forth in Section 5.1.4.
- 5.2.2 Provide and implement a system for tracking questions, resolutions, decisions, directions and other information matters that arise during the development of the Drawings and Specifications for the Project. The decision tracking system shall be in a format approved by Owner and updated weekly during the Pre-Construction Phase.

## 5.3 **Scheduling**

### 5.3.1 Work Progress Schedule (WPS)/Project Schedule

5.3.1.1 Develop a WPS/Project Schedule for Project Team review and Owner’s approval that coordinates and integrates the activities of the Project, including Contractor’s services, the anticipated milestones for the Work, site access requirements, permits and approvals, CM’s services, the work of other consultants and suppliers, and Owner’s activities and key milestones with the anticipated construction schedules for other contractors. The WPS must identify all major milestones through Project Final Completion. The WPS shall be created and maintained in accordance with Owner’s Specifications using Owner specified format and software.

5.3.1.2 Contractor shall update the WPS/Project Schedule throughout the Pre-Construction and Construction Phases.

### 5.3.2 Construction Schedule

5.3.2.1 Prior to submitting a GMP proposal, the Contractor shall prepare and provide to the Owner for Owner's approval a detailed Construction Schedule that is consistent with meeting the Project Schedule for completion of the Project.

5.3.2.2 Develop a preliminary Construction Schedule for use in the bidding/proposal process for each GMP for all construction under this Master Agreement.

5.3.3 The Contractor shall exercise reasonable care in preparing schedules and estimates. The Contractor, however, does not warrant or guarantee schedules, except as may be included as part of the GMP, or requirements indicated in Article 12 of this Master Agreement.

#### 5.4 **Budget and Cost Consultation**

5.4.1 Contractor shall be responsible for preparing and updating all procurement progress and construction cost estimates and distributing them to the Project Team.

5.4.2 Contractor shall commence preparation for an all-inclusive estimates for the 50% Design Development Documents of the Texas Capitol Roof Replacement and Rehabilitation Project immediately upon execution of this Master Agreement. A second all-inclusive estimate shall commence immediately upon completion of the 95% Design Development Documents.

5.4.3 Contractor shall provide ongoing estimating and cost consultation services throughout the duration of the Project, including identification and tracking of decisions that change the scope or quality of the Project and providing ongoing updates of their cost and budget impact.

5.4.4 Contractor shall promptly identify all variances between estimated costs and actual costs as pricing is received and shall promptly report such variances to the Project Team in the form of detailed, line-item variance reports, along with recommendations for action.

5.4.5 Contractor shall work with the Owner and CM to compare Owner estimates and Contractor estimates to clarify and confirm scope and pricing.

5.4.6 The above-references services shall be subject to the limitations set forth in Section 5.1.4.

#### 5.5 **Coordination of Design and Construction Contract Documents**

5.5.1 During the Design Phase, the Contractor shall review the Design Documents for clarity, consistency, constructability, and coordination among the construction trades. The results of the review shall be provided in writing to the Owner and as notations on the Design Documents. The Contractor is not responsible for providing, nor does the Contractor control, the Project design and contents of the Design Documents. By performing the reviews described herein, the Contractor is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and Design Documents. The Contractor's actions in reviewing the Project design, Design Documents, and in making recommendations as provided herein are only advisory

to the Owner. Formal Design Document reviews shall occur concurrent with the construction cost estimates.

- 5.5.2 Review all Drawings, Specifications, and other Construction Documents as they are developed by Owner's CM during the construction documents design phases of the Project.
- 5.5.3 Consult with Owner's **CM** on the selection of materials used on the Project. Coordinate with Owner on site use, construction feasibility, availability of labor and materials, procurement time requirements, construction coordination, and restoration approaches.
- 5.5.4 Promptly advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Construction Documents, within 2 days of discovery.
- 5.5.5 Advise Owner on reasonable adjustments in the Project that may provide opportunities beneficial to time, cost or quality subject to the limitations set forth in Section 5.1.4.
- 5.5.6 Review the Construction Documents for compliance with all applicable laws, rules and regulations (applicable solely to the means and methods of Contractor's Work and, provided that the Work of Contractor complies with the Drawings and Specification, Contractor shall not be liable for any damages to the extent the Work required by the Drawing and Specifications is at variance from any such laws, rules and regulations unless the Contractor had or should have had actual knowledge that the Work required by the Drawings and Specifications deviated from such laws, rules and regulations), the Contract Documents, and Owner requirements.
- 5.5.7 After reviewing each phase of Design Documents, the Contractor shall make written recommendations to the Owner and Design Professionals with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction the Contractor intends to use, time for construction and separation of the Work into various categories for contract purposes. The Owner reserves the right to use or reject such recommendations for the benefit of the Project.

## 5.6 **Construction Planning and Subcontractor Buyout Strategy**

- 5.6.1 Identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. If the Owner agrees to procure any items prior to the establishment of the GMP, the Owner shall procure the items on terms and conditions acceptable to the Contractor. Advise Owner and CM on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. If requested by Owner, and subject to Owner's prior written approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

- 5.6.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and Owner. These recommendations may include, but are not limited to multiple separate contracts. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, Owner's goals for HUB contractor participation, and other constraints.
- 5.6.3 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the Work to be performed by the various Subcontractors or Owner's separate contractors, if any.
- 5.6.4 Develop a bid/proposal package strategy that addresses the entire scope of each phase and stage of the Project. In developing the bid/proposal package strategy, Contractor shall identify all bid/proposal packages on which Contractor intends to submit a self-performance bid/proposal. The bid/proposal package strategy shall be reviewed with Owner on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of the Project and Owner.
- 5.6.5 Assist Owner, **CM**, Owner's other consultants, and Owner's separate contractors in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project including, without limitation, the State Fire Marshal, the Department of Public Safety, the Texas Historical Commission, the local fire department, and Owner's insurance provider.
- 5.6.6 Refine, implement and monitor required HUB Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to Owner for the Project.
- 5.6.7 Recommend to Owner and CM any Quality Assurance tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the performance of such laboratories and consultants.
- 5.6.8 Review the Construction Documents to ensure that they contain adequate provision for job site areas required for construction, all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Project.
- 5.6.9 Develop a Weather Protection Plan that ensures the Capitol and all its critical finishes and furnishings are protected from the weather during the removal and replacement of the roof systems at all times.
- 5.6.10 With the Owner, define a preliminary site security coordination plan. Regularly work with the Owner and the Department of Public Safety to develop and update a site access plan that provides site security and adequate construction access.

- 5.6.11 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or stages. Make recommendations that minimize the adverse effects of labor shortages.

## **5.7 Bid/Proposal Phase**

- 5.7.1 Contractor shall work with the Owner and CM to refine and clarify the final bid documents, determine the final divisions of work, and provide the Construction Management (CM) schedule.
- 5.7.2 In accordance with *Texas Government Code section 2166.2532*, Contractor shall publicly advertise for a minimum of 14 days and solicit competitive lump sum bids/proposals from trade contractors or subcontractors for the performance of all major elements of the Project other than the minor work that may be included in general conditions. Criteria for determining the bid/proposal that provides the best value to Owner shall be established by the Project Team and included in the request for bids/proposals. Contractor shall notify Owner in advance in writing of the date within the Work Progress Schedule that it will receive the bids/proposals.
- 5.7.3 Contractor shall qualify all bidders/ proposers according to the CM specifications, and specifically all restoration subcontractors. This process may begin prior to release of bid/proposal packages, but must be open through submission of bids/proposals. Prior solicitation of qualifications provides an opportunity to engage qualified bidders/proposers and review qualifications to ensure qualified subcontractors are available.
- 5.7.4 Schedule and conduct pre-bid conferences with interested bidders/proposers, Subcontractors, material suppliers, and equipment suppliers, and record minutes of the conferences. Coordinate with the Owner and CM so that their representatives may be present.
- 5.7.5 Contractor shall prepare and provide to Owner a comparison of bids/proposals in an agreed upon format.
- 5.7.6 Contractor and Owner shall review all trade contractor, supplier, or Subcontractor bids/proposals in a manner that does not disclose the contents of any bid/proposal to persons outside of the Project Team during the selection process. Contractor and Owner shall review pricing and qualifications and compare bids/proposals to prior estimates to confirm that the bids/proposals are reasonable. Contractor shall include Owner in pricing discussions with the selected bidders/proposers if questions remain. Based on the selection criteria included in the request for proposals, Contractor shall recommend to Owner the bid/proposal that provides the best value for the Project. Upon Owner's written concurrence in the recommendation, Contractor may negotiate the terms of the subcontract with the apparent best value bidder/proposer. Owner reserves the right to reject any bid/proposal.
- 5.7.7 Contractor shall conduct post bid interviews with winning bidders, CM, and Owner to confirm agreement on scope of work. Contractor shall review contracts as necessary with

all subcontractors. Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

- 5.7.8 All subcontracts and supplier contracts must be on a lump sum basis unless other payment terms are approved in writing and in advance by Owner. Upon Owner's concurrence with the final terms of the subcontract, Contractor shall enter into a written subcontract for the subcontract work and provide a copy to Owner. All bids/proposals shall be publicly available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.
- 5.7.9 If Contractor reviews, evaluates, and recommends to Owner a bid/proposal from a trade contractor or subcontractor, but Owner requires another bid/proposal to be accepted, Owner shall compensate Contractor by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk Contractor incurs because of Owner's requirement that the other bid/proposal be accepted.
- 5.7.10 Contractor may seek to self-perform portions of the Project identified for self-performance in the bid/proposal strategy. Contractor must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. However, Contractor bid/proposal must be sealed and submitted not less than twenty four (24) hours before the submission date for all other trade contractors or Subcontractors. Owner will, at its sole discretion, determine whether Contractor's bid/proposal provides the best value for Owner, and its determination shall be final. Contractor must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors. For payment purposes, Contractor shall account for self-performance work in the same manner as it does all other subcontract costs.
- 5.7.11 Contractor shall identify every Subcontractor it intends to use on the Project, including Subcontractors used for self-performed work, to Owner in writing and deliver to Owner a HUB Plan at least ten (10) days before entering into any subcontract to allow Owner adequate time to object or comment. Refer to 3.3.7 of the UGC's.
- 5.7.12 Owner reserves the right to issue an immediate Notice-to-Proceed with a specific scope of work if that scope of work is critical to the schedule and will not affect the HUB plan as submitted.
- 5.7.13 Contractor shall coordinate with the CM and Owner to schedule and conduct pre-construction meetings by trade.

## **5.8 Safety**

- 5.8.1 In accordance with the UGC's, Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations.

- 5.8.2 Contractor shall provide information to Owner and CM regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents.
- 5.8.3 Contractor shall provide a safety manual for the Project for Owner review. The Contractor's Safety Manual shall be easily accessible on site and its provisions formally implemented by Contractor. Requirements in this section don't imply or provide a duty for the Owner or its consultants to ensure the accuracy, completeness, suitability, or technical compliance with OSHA or any other safety regulations or protocols.

## **ARTICLE 6 GUARANTEED MAXIMUM PRICE PROPOSALS**

- 6.1 The Project shall include one (1) GMP, unless multiple GMP's are mutually agreed to as the most effective means of Project Delivery.
- 6.2 The GMP shall be presented in a form approved by the Owner and shall include the cost, schedule, list of Subcontractors, insurance, bonds, a list of clarifications and assumptions, allowances, such certification required by the Contract Documents, and any other items set forth in this Section 6. Contractor and Owner shall agree upon a format and any additional inclusions.
- 6.3 The general conditions cost and the preliminary Work Progress Schedule shall apply to the one GMP as the only Phase of the Project.
- 6.4 A construction schedule shall accompany the GMP, such schedule to be a defined part of the Work Progress Schedule for the Project.
- 6.5 When the Owner's CM issues 100% Construction Documents for the Project, Contractor shall prepare and submit the Guaranteed Maximum Price Proposal to Owner. The GMP Proposal must be prepared in accordance with the guidelines and delivered in the format specified by Owner. Owner, at its sole option and discretion, may specify requirements for the GMP Proposal. Contractor shall not withdraw its Guaranteed Maximum Price Proposal for sixty (60) days following submission to Owner.
- 6.6 The Contractor understands, confirms, and agrees that its responsibility hereunder is to construct the Project in accordance with the Drawings and Specifications. The GMP is intended to be based upon the completed Construction Documents. The Contractor shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the GMP on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the Drawings and Specifications.
- 6.7 During development of the GMP Proposal, minimum 30 days prior to submission, Contractor shall present to the Owner and A/E the preliminary qualifications, clarifications, assumptions, exclusions, value engineering ideas and any other factors that Contractor thinks may be relevant to establishment of a GMP. Contractor shall review development of the GMP Proposal with

Owner. In the event the Owner and/or CM discover any inconsistencies or inaccuracies in the information presented by the Contractor, they shall promptly notify the Contractor, who shall make appropriate adjustments of the GMP proposal, its basis, or both.

- 6.8 The GMP Proposal must include a written description of how it was derived that specifically identifies assumptions, inclusions, and exclusions of Contractor in the GMP and the monetary amounts attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Contractor's estimated general conditions costs which are a Cost of the Work and estimated Construction Costs organized by trade and CSI Division; contingency amounts; the Construction Phase Fee in the Master Agreement; and the proposed Contract Time, including dates for Notice-to-Proceed, Substantial Completion and Final Completion.
- 6.9 If a GMP proposal is prepared, at the Owner' request, prior to completion of the Construction Documents, the GMP Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope.
- 6.10 If the GMP proposal is prepared prior to completion of Construction Documents, the GMP Proposal may include Contractor's Contingency amount that is reflective of the risk inherent in the state of completion of the Construction Documents at the time the proposal is submitted. For 100% Construction documents, the Contractor shall carry five percent (5%) of the Cost of the Work.
- 6.11 Included with its GMP Proposal, Contractor shall provide digital files of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project at the time of the GMP Proposal and that are relevant to the establishment of the GMP. The files shall be referenced and detailed by file name in, and incorporated into, the GMP Proposal. Files may be maintained and mutually accessible in a manner mutually agreed to by Owner and Contractor.
- 6.12 The GMP Proposal and all supporting documents shall identify and completely describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the GMP. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality or quantity of material and/or workmanship shall prevail over all other interpretations.
- 6.13 In submitting the GMP Proposal, Contractor represents that it will provide every item, system or element of performance that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by Owner. Upon Owner's written acceptance of the GMP Proposal, Contractor shall not be entitled to any increase in the GMP. If the GMP is based upon Construction Documents that are identified as less than 100% complete, no increase in the GMP shall be allowed except as qualified in Section 10.3.1 of this Master Agreement or as otherwise modified per Article 11 of the Uniform General Conditions.



- 6.14 The GMP Proposal shall adopt and incorporate all of the terms and conditions of this Master Agreement and all attachments to this Master Agreement. Any proposed deviation from the terms and conditions of this Master Agreement must be clearly and conspicuously identified to Owner in writing and specifically accepted in writing by Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by Owner and the terms of this Master Agreement and its attachments, the terms of the Master Agreement and its attachments shall control.
- 6.15 Owner may accept or reject the Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Contractor. Upon acceptance by Owner of the GMP Proposal in writing, both Parties shall execute the GMP Proposal which shall become part of this Master Agreement. If Owner rejects the GMP Proposal or the Parties are unable or unwilling to agree on a GMP within 90 days of the submission of the GMP to the Owner, Owner or Contractor may terminate this Master Agreement in accordance with the provisions of this Master Agreement.
- 6.16 Contractor agrees to negotiate and execute subcontract agreements with the major trades within 30 days of formal acceptance of a GMP proposal, unless otherwise approved by the Owner in writing. Major trades are defined as those in excess of \$50,000 in value. All the subcontracts for which Contractor received bids/proposals prior to the GMP shall be contracted by the Contractor within 60 days.
- 6.17 Following acceptance of the GMP by the Owner and throughout the Project, Contractor shall provide the following information to the Owner:
- 6.17.1 The trade packages that have been completely bought out;
  - 6.17.2 The trade packages remaining that have not been bought out;
  - 6.17.3 A complete line item breakdown of the calculations used to establish a lump sum amount based on the GMP Schedule of Values;
  - 6.17.4 An accounting of all savings amounts (including unused contingencies) that are to be returned to Owner as part of the lump sum calculation; and
  - 6.17.5 Any other Project information requested by Owner.
- 6.18 Contractor shall document the actual Cost of the Project at buyout as compared to the Guaranteed Maximum Price proposal and shall report this information to Owner monthly and with Contractor's recommendation for selection of a bid/proposal for each subcontracting package.
- 6.19 Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has become generally familiar with those conditions under which the Work is to be performed. Contractor's investigation will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. This investigation is for the purpose of facilitating coordination and construction by the Contractor and is not for the purpose of discovering errors, omissions, or inconsistencies in the Construction Documents. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

- 6.20 Contractor acknowledges that as part of its Pre-Construction Phase Services it shall participate in the review of the Construction Documents. Contractor's review of the design documents will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, the Contractor shall review the drawings, specifications and other Construction Documents notify Owner of any errors, omissions or discrepancies in the documents discovered by the Contractor. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's Pre-Construction Phase design review process that Contractor did not bring to the attention of Owner and CM in a timely manner. Notwithstanding such review of the design documents, the CM shall be solely responsible with respect to the design sufficiency of any recommendations made by the Contractor which are incorporated into the Work on the Project. The services provided by the Contractor shall in no manner be construed to be professional design services.
- 6.21 The Contractor shall prepare and distribute to the Owner a report during the Bid Phase and Award Phase to include: 1) bids received and other costs incurred to perform the Initial Construction Work, and 2) for bids received after the issuance of the final Contract Documents. The report shall specify actual award prices and construction costs for the Project.
- 6.22 Once the GMP is finalized, the Owner and Contractor shall execute the Guaranteed Maximum Price Proposal Form (Exhibit J) that shall identify the Contract Documents in their entirety and shall define the GMP, and shall be signed by the Owner and the Contractor and incorporated into this Master Agreement.
- 6.23 If the cost of any division of Work as awarded is less than the amount shown in the GMP, as determined in accordance with the terms of this Master Agreement, the amount indicated in the GMP for such item shall be reduced by an amount equal to the difference between such cost and the amount shown in the GMP for such item and the Contractor's Contingency shall be increased by the same amount. The GMP shall remain unchanged.
- 6.24 If the cost of any division of Work as awarded is greater than the amount shown in the Guaranteed Maximum Cost detail, to the extent that the Contractor's Contingency is sufficient, the amount shown in the GMP for such item shall be increased by an amount equal to the difference between such cost and the amount shown in the GMP for such item and the Contractor's Contingency shall be reduced by the same amount. The GMP shall not be adjusted even if the cost differential is greater than the Contractor's Contingency.
- 6.25 If the Owner directs the Contractor to award a contract to a bidder other than the lowest responsible and responsive bidder for any portion of the Project, the GMP shall be increased by the amount of the difference between the award price and the price submitted by the lowest responsible and responsive bidder. The Contractor's Contingency shall not be changed.
- 6.26 Following the execution of this Master Agreement, the Owner may authorize the Contractor to proceed on specific Initial Construction Work, when necessary for a timely execution of the entire Project scope of work and to allow for minimal disruption to the Owner's operations. The Contractor shall be compensated for the Initial Construction Work at the agreed upon cost and will be billed on a monthly basis. The cost of the Initial Construction Work, including the

Contractor's costs related to field operations and supervision provided on the Project site required to properly execute the Initial Construction Work shall be incorporated into a GMP.

- 6.27 The form for submitting each GMP is attached as Exhibit J (Guaranteed Maximum Price Proposal Form).

## **ARTICLE 7 CONSTRUCTION PHASE SERVICES**

The Construction Phase shall be deemed to commence upon the date specified in a written Notice-to-Proceed issued by Owner after written approval of the Guaranteed Maximum Price Proposal and shall continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Contractor shall not incur any Subcontractor costs for construction of the Project prior to issuance by Owner of written authorization to commence such Work. Contractor shall perform the following Construction Phase Services:

- 7.1 Construct the Work in strict accordance with this Master Agreement within the time required by the Schedule approved by Owner as a part of the GMP.
- 7.2 Organize and maintain a competent, full-time staff at the Project site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Owner.
- 7.3 Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. The designated representative shall be Owner's primary contact during the Construction Phase and shall be available as required for the benefit of the Project and Owner. The designated representative shall be authorized to act on behalf of and bind Contractor in all matters related to this Master Agreement and to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.
- 7.4 Attend and prepare the agenda for regularly scheduled weekly Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes. Attend monthly Owner Project meetings chaired by the Owner.
- 7.5 In addition to attending regularly scheduled Project progress meetings, Contractor shall schedule, direct and attend interim progress meetings (i.e., commissioning meetings, coordination meetings, mock-up review meetings, pre-installation meetings) with other members of the Project Team as required to maintain Project progress. Contractor shall record and distribute the minutes of each meeting to each Project Team member. The minutes shall identify critical activities that require action and the dates by which each activity must be completed.
- 7.6 Coordinate delivery and installation of Owner -procured material and equipment.
- 7.7 In accordance with this Master Agreement, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.

- 7.8 Assist Owner or CM in obtaining all approvals required from authorities having jurisdiction over the Project.
- 7.9 Coordinate, monitor, and inspect the work of Subcontractors to ensure conformance with the Construction Documents.
- 7.10 Contactor shall coordinate site construction management services including, but not limited to: maintain daily on-site project logs and schedule updates; work with Owner on quality assurance testing and inspection programs.
- 7.11 Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Contractor shall keep Owner informed of the progress and quality of the Work.
- 7.12 Contractor shall provide weekly written progress reports in a form acceptable to the Owner.
- 7.13 Contractor shall promptly correct any defective Work at Contractor's sole expense.
- 7.14 Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects, except for those inherent in the quality of the Work the Construction Documents require or permit; and that the construction will conform with the requirements of the Construction Documents. Contractor shall be responsible for correcting all items that do not comply with the Construction Documents at its sole expense without cost to Owner. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. In the event Owner claims that Contractor has breached any warranty, Owner shall give Contractor notice and a reasonable opportunity to cure any alleged breach of any warranty. If within one year after the date of Substantial Completion of the Work, any of the Work is found to be not in accordance with the requirements of the Construction Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give written notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it and Contractor shall reimburse the Owner for the reasonable cost of correcting such deficiency.
- 7.15 Contractor shall maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "record drawings" of the completed Work.

- 7.16 Contractor shall maintain the Owner's Document Control system which will track all RFI's, submittals, change orders, correspondence, claims, etc., using software that tracks documents by issue.
- 7.17 Contractor shall secure executed contracts, payments and performance bonds, insurance, etc. from the awarded firms and submit them to the Owner for each phase. Regularly review the contracts and assure the Owner of separate contractor and subcontractor contract compliance.
- 7.18 The Contractor shall prepare and distribute a Project Cost Report to the Owner following the Bid and Award Phase that graphs forecasted or estimated monthly cash payments the Owner will pay under the Contract. The report shall be based on actual award prices and construction costs for the Project and the report shall specify earned cash flow, including retainage, budget, contractor contingency status, and comparison with the physical progress of the work.
- 7.19 The Contractor shall update the Project Cost Report that was prepared and distributed to the Owner during the Bid Phase and Award Phase as the Construction Phase progresses and the Contractor incurs costs for the Project. The Project Cost Report should indicate subcontract amounts, cost completed to date, and estimated cost remaining to completion. The Contractor shall make the Project Cost Report available to the Owner upon request.

#### **ARTICLE 8 CONSTRUCTION PHASE FEE**

Contractor's Construction Phase Fee is **X.X% of the Direct Construction Cost defined in Article 10** and is the maximum amount payable to Contractor for overhead and profit incurred in the performance of the Project Work. References to Contractor's "overhead" and "profit" mean Contractor's Construction Phase Fee. The Construction Phase Fee **includes, but is not limited to**, the following items:

- 8.1 All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of Contractor.
- 8.2 Salaries of Contractor's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.
- 8.3 Any and all overhead, labor or general expenses of any kind unless specifically allowed under general conditions. These costs include, but are limited to: costs for the purchase, lease, rental of or allowance for vehicles and their maintenance, radios/communication equipment, jobsite computers and other business equipment, and specialized telephone systems, including cellular/digital phones; trade or professional association dues; cost for relocation of any of Contractor's personnel; and travel, per diem and subsistence expense of Contractor, its officers or employees except as specifically allowed under the Master Agreement or specifically delineated in the general conditions Exhibit.
- 8.4 Any financial costs incurred by Contractor including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

- 8.5 Any legal, accounting, professional or other similar costs incurred by Contractor related to or arising from the Project.
- 8.6 Any Federal and/or State income and franchise taxes paid by Contractor. Any fines, penalties, sanctions or other levies assessed by any governmental body against Contractor.
- 8.7 Any cost arising out of a breach of this Master Agreement or the fault, failure or negligence of Contractor, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or schedule milestones; costs arising from Contractor's contractual indemnification obligations; liquidated or actual damages imposed by Owner for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.
- 8.8 The cost of any and all insurance deductibles payable by Contractor and costs due to the failure of Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by this Master Agreement. If the Owner elects to acquire All-Risk or Builder's Risk Insurance directly, Contractor shall cover any deductible amount incurred from a loss during construction up to \$10,000 per event and up to \$25,000 for a water event or a lesser amount if the deductible in the policy is less than these amounts.
- 8.9 Any and all costs that would cause the Guaranteed Maximum Price and any agreed upon Change Orders to be exceeded.
- 8.10 Any and all costs not specifically identified as an element of the Direct Construction Cost.
- 8.11 See Exhibit C for the Fee Amount.

## **ARTICLE 9 PAYMENTS**

### **9.1 General Requirements**

- 9.1.1 The Pre-Construction Phase Fee in Exhibit C shall be paid as a lump sum not subject to the Construction Phase Fee, upon issuance of the Notice to Proceed for the GMP.
- 9.1.2 Each Schedule of Values submitted with an Application for Payment shall include the originally established value for each work classification line item or subcontract and shall identify any revisions to the costs or cost estimates for each work classification or subcontract. No line item for a particular item of the Work on the Schedule of Values shall exceed 10% of a subcontract or \$50,000, whichever is less, without the consent of the Owner. The format and tracking method of the original Schedule of Values and of all updates shall be subject to approval by Owner. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including Contractor's overhead and profit, shall not exceed the unpaid balance of the GMP less the retainage held by Owner on Work previously completed.

- 9.1.3 Retainage shall be withheld from the entire amount approved in an Application for Payment, including the Cost of the Work, general conditions, and Contractor's Fee.
- 9.1.4 Owner is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. Contractor is responsible for taking full advantage of all tax exemptions applicable to the Project. Owner will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.
- 9.1.5 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment to Contractor under any of the following circumstances:
  - 9.1.5.1 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, Owner shall pay for allowable Project costs for which there is sufficient documentation;
  - 9.1.5.2 Contractor is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Contractor;
  - 9.1.5.3 If Owner, in its good faith judgment, determines that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Construction Documents;
  - 9.1.5.4 Contractor is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or
  - 9.1.5.5 Contractor fails to obtain, maintain or renew insurance coverage as required by this Master Agreement.
- 9.1.6 No partial payment made by Owner shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by Owner shall constitute, or be construed to constitute, a release of Contractor from any of its obligations or liabilities with respect to the Project.
- 9.1.7 Owner shall have the right to verify and audit the details of Contractor's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Contractor during normal business hours; (2) examining any reports with respect to the Project; (3) interviewing Contractor's employees; (4) visiting the Project site; and (5) any other reasonable action.

## 9.2 Construction Phase Payments

- 9.2.1 All payment requests shall be submitted on an Application for Payment with a Schedule of Values approved by Owner and include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Payment for approved Change Orders shall be made as part of Contractor's Application for Payment. Failure to submit "HUB Progress Assessment Report Documentations of Subcontracted Work" form with each Application for Payment will cause rejection of the application by Owner and its return to Contractor.
- 9.2.1.1 Contractor's Construction Phase Fee shall be shown as a separate line item on the Schedule of Values. Payment of Contractor's Construction Phase Fee shall be made with each Application for Payment in the same proportion as the percentage completion of the Cost of the Work of the Project.
- 9.2.1.2 For general conditions costs in Exhibit D, Contractor's Applications for Payment shall identify the general conditions costs as follows:
- a) Personnel Expenses. Personnel expenses shall be considered a lump sum and shall be billed pro rata monthly from the end of the first month after the Notice to Proceed to Final Completion and the final Application for Payment. After approval of the benefits and burden by the Owner, the lump sum proposed by Contractor shall not be adjusted unless the proposed staff are changed by the Contractor, at which time the cost to date will be audited and the lump sum may be reduced if the compensation for the approved substitution is less.
- b) The cost for bonds and insurance shall be identified and shall be paid in full when paid by Contractor, upon inclusion in an Application for Payment. If the Owner elects to purchase Builder's Risk directly, Exhibit D shall be adjusted as necessary to reflect that coverage.
- c) All other general conditions cost by categories approved by the Owner shall be listed and shall be paid pro rata from the end of the first month from Notice to Proceed to Final Completion and the final Application for Payment. Contractor may, with pre-approval of the Owner, expend savings in one category of this "c" portion of the general conditions on other categories within "c" if the Owner determines it is in the best interest of the Project.
- 9.2.1.3 Copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and backup related to general conditions costs shall be maintained. At the end of the Project, the Owner and Contractor shall review actual costs with backup, and the final Application for Payment shall credit to the Owner any unexpended funds of the general conditions costs to the extent that any line item has not been spent and a savings has accrued to the Owner.
- 9.2.1.4 Pay requests for Subcontractor work included in an Application for Payment shall not exceed the percentage of Work allocated to that Subcontractor for each respective Schedule of Values work classification which has been actually completed and shall not exceed the total value of the subcontract amount.



- 9.2.1.5 Pay request shall include Conditional Lien Releases from all Subcontractors and suppliers for work being invoiced, and Unconditional Lien Releases for payments made prior to the payment request.
- 9.2.1.6 Contractor's Request for Final Payment shall not be made until all Work is completed and all requirements of the Contract Documents have been satisfied including, without limitation: delivery to Owner of a complete release of all liens and claims arising out of the Work; written consent of the surety to release of final payment; and an affidavit that, to the best of Contractor's information, knowledge and belief, the release includes and covers all materials and services over which Contractor has control and for which a lien could be filed and that all known debts and claims arising from the Project have been satisfied. Alternatively, Contractor may, at its sole expense, furnish a bond satisfactory to Owner to indemnify Owner against any lien arising out of the Work. If any lien is asserted against Owner after all payments are made, Contractor shall reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all court costs and reasonable attorneys' fees, and Owner shall retain all other remedies available to it at law and in equity.
- 9.2.1.7 Owner shall have no obligation to make Final Payment until a complete and final accounting of all the allowable costs has been submitted by Contractor and has been audited and verified by Owner or Owner's representatives. Owner shall make final payment to the Contractor no later than 30 days after the acceptance of the CM's final Certificate of Payment.
- 9.2.1.8 The acceptance by Contractor or Contractor's successors of Final Payment under this Master Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Contractor, its Subcontractors, suppliers and consultants or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Master Agreement.

## **ARTICLE 10 DIRECT CONSTRUCTION COST**

Direct Construction Cost means the sum of the amounts that Contractor actually and necessarily incurs constructing the Project in strict compliance with the Construction Documents, excluding the Contractor's Fee.

### **10.1 General Conditions Costs**

- 10.1.1 Contractor is entitled to receive payment for the actual cost of the allowable general conditions items incurred after receipt of a Notice-to-Proceed with Construction from Owner through Substantial Completion of the Project, plus 30 calendar days. Contractor is not entitled to reimbursement for general conditions costs incurred before

receipt of the Notice-to-Proceed. General conditions costs incurred after Substantial Completion, plus 30 calendar days, must be approved in advance by Owner through Change Order. See Exhibit D.

- 10.1.2 Exhibit D to this Master Agreement represents the general conditions costs proposed by the Contractor and agreed to by the Owner. This amount applies to the entire Project and its single GMP. The general conditions costs shall be listed on the schedule of values.
- 10.1.3 Allowable general conditions items are identified in Exhibit D. Items not specifically included Exhibit D will not be allowed as general condition costs on the Project unless amended by Change Order. Further definition of allowable general conditions costs included in Exhibit D or approved by Change Order follows.
  - 10.1.3.1 Personnel Costs. The actual Worker Wage Rate for Contractor's hourly employees and the Monthly Salary Rate of Contractor's salaried personnel for the time actually located at the Project site, when stationed at the home office of the Contractor while directly performing supervisory and administrative services for the Project on or before the date required by the Construction Documents for final completion, as such date may be extended as provided in the Construction Documents, and when engaged in factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. The Project Manager's Monthly Salary Rate may be included in the general conditions costs only when the Project Manager is directly located on and managing the Project. A burden/mark-up on base salary personnel costs shall be allowed with Owner approval. Such salary burden/mark-up shall include those reasonable and standard costs.
  - 10.1.3.2 Costs of long-distance telephone calls, faxes, postage, package delivery and courier service, cell phone service, hardwired telephone service, and reasonable expenses of Contractor's jobsite office if incurred at the Project site and directly and solely in support of the Work.
  - 10.1.3.3 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Contractor, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition Line Items. If an item is not fully consumed in the construction of the Work, its cost shall be based on actual cost of the item less its fair market salvage value.
  - 10.1.3.4 Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Contractor, provided Owner has approved the rentals and the rental rates in advance. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from Contractor, the rental rate, including freight

and delivery costs and all operating expenses except labor, shall be approved in advance by Owner and shall be in accordance with the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

10.1.3.5 The aggregate rental cost of any item charged to Owner shall not exceed eighty percent (80%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds eighty percent (80%) of the purchase and maintenance price, Contractor shall purchase the equipment and turn it over to Owner upon Final Completion of the Work or, at Owner's option, credit Owner with the fair market resale value of the item.

10.1.3.6 Permit and inspection fees that are not subject to exemption.

10.1.3.7 Premiums for insurance and bonds to the extent directly attributable to this Project.

10.1.4 Pre-Construction Services compensation shall be a lump sum of (\$XX.00) as included in the Contractor's proposal.

10.1.5 Costs of all project site facilities, including cost of temporary field offices, warehouses, storage, work and service facilities, their furniture and office machines and computers, and job identification signs with their maintenance, removal and overhead expenses. Cost of utilities, including power, water supply, storm and sewer drainage, telephone, including their temporary and final connections.

## **10.2 Cost of the Work**

Contractor is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. Contractor is not entitled to reimbursement for Cost of the Work costs incurred before receipt of Owner's written authorization. Cost of the Work includes all labor and materials to construct the Work as defined in the Contract Documents. Cost of the Work does not include Contractor's fee or general conditions.

## **10.3 Contractor's Contingency**

10.3.1 If the GMP is priced prior to completion of 100% Construction Documents, the Guaranteed Maximum Price Proposal may include Contractor's Contingency amount to be used to fund increases in the Direct Construction Cost of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work.

10.3.2 When the GMP is priced based upon 100% Construction Documents, the Contractor's Contingency shall be established at 5% of the GMP Direct Construction Cost. When buyout of the Project is at least 95% complete, the Owner may elect to recognize any

savings achieved to that point in excess of 5% of the GMP value by issuing a deductive change order for the saved amount.

10.3.3 Any re-allocation of funds from Contractor's Contingency to cover increases in the Direct Construction Cost must be approved by Owner in advance and in writing, such approval not to be unreasonably withheld. In written requests to use Contractor's Contingency, Contractor shall provide detailed documentation of the scope of work affected and the bases for any increases in costs.

10.3.4 Contractor's Contingency is specifically not to be used for Contractor rework, unforeseen conditions, cost increases caused by lack of coordination or communication with CM or trade Subcontractors, or to correct errors or omissions in the Construction Documents, general conditions costs, or costs otherwise recoverable by insurance, bonds, subcontractors or suppliers. At Final completion, the uses of contingency are restricted and may not be used. The Owner requires that 100% of the savings between the GMP and the actual Cost of the Work accrue to the Owner.

10.3.5 Owner shall compensate Contractor by Change Order for changes in the design and for unforeseen conditions not reasonably evident or known at the time of the Notice to Proceed through a contingency held and maintained by the Owner.

10.3.6 As the buyout of the Work progresses, Contractor's Contingency amount shall be reduced by mutual agreement of Owner and Contractor. Any balance in Contractor's Contingency fund remaining at the end of the buyout shall be returned to Owner as savings.

10.3.7 Any expenditure of the Contractor's Contingency must have approval of the Owner prior to payment.

#### **10.4 Owner's Contingency**

10.4.1 The Owner incorporates into the total amount of this Master Agreement a contingency of 5% of any approved GMP, upon execution. Transfer of amounts from the contract amount into the GMP will be formalized by Change Order at the sole discretion of the Owner to accommodate Owner-initiated scope changes. Any portion of the Owner's Contingency not encumbered into a GMP will revert to the Owner upon Substantial Completion of the Project.

### **ARTICLE 11**

#### **CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS**

11.1 If the allowable, final, verified, audited amount of the general conditions costs, Cost of the Work, and Contractor's Contingency is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to Owner as savings, and the final Contract Sum shall be adjusted accordingly. Contingency on the Cost of the Work within any GMP shall be credited to the Owner as the GMP is finalized.

- 11.2 Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by Contractor:
- 11.2.1 The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by Owner. Upon completion of the Work or when no longer required, Contractor shall either credit Owner for the fair market value (as approved by Owner) for all surplus tools, construction equipment and materials retained by Contractor or, at Owner's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to Owner's account.
- 11.2.2 Discounts earned by Contractor through advance or prompt payments funded by Owner. Contractor shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. Contractor shall purchase materials for the Project in quantities that provide the most advantageous prices to Owner.
- 11.2.3 Rebates, discounts, or commissions obtained by Contractor from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.
- 11.2.4 Deposits made by Owner and forfeited due to the fault of Contractor.
- 11.2.5 Balances remaining on any Allowances, Contractor's Contingency, or any other identified contract savings. Owner shall be entitled to recover any net savings realized between the GMP and the buyout price for subcontracting work once the buyout is complete. During the buyout Contractor may use savings from one procurement effort to offset overages in other procurement efforts, so long as the total Cost of Work proposed in the GMP does not increase.
- 11.3 Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.

## ARTICLE 12 TIME

- 12.1 The time limited stated is of the essence of this Master Agreement and the other Contract Documents.
- 12.2 This Master Agreement shall be effective on XX, 20XX, the date executed by both Parties, and shall terminate on XX, 20XX or Final Completion of the last GMP, whichever is later.
- 12.3 Contractor shall achieve Substantial Completion of all Work on or before XX, 20XX and Final Completion of all Work on or before XX, 20XX, subject to time extensions granted by Change Order. See Exhibit H.

- 12.4 ADDITIONALLY, THE TIMES SET FORTH FOR COMPLETION OF THE WORK IN THE EXECUTED GMP, IN THE NOTICES-TO-PROCEED AND IN THE GMP PROPOSAL, ARE ESSENTIAL ELEMENTS OF THIS MASTER AGREEMENT. FINAL COMPLETION OF THE WORK OF THE GMP SHALL BE NOT LATER THAN JUNE 11, 2025.
- 12.5 The Construction Phase for the GMP shall be deemed to commence on the date specified in a written Notice-to-Proceed issued by Owner after approval of the Guaranteed Maximum Price Proposal.

### **ARTICLE 13 BONDS AND INSURANCE**

- 13.1 Upon execution of this Master Agreement, Contractor shall provide a security bond on the form provided by Owner in the amount of 5% of the Budgeted Construction Cost. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds.
- 13.2 Upon acceptance by Owner of the Guaranteed Maximum Price Proposal, Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the UGSC. The penal sum of the payment and performance bonds shall be equal to the GMP. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.
- 13.3 Contractor shall not commence work under this Master Agreement until it has obtained all required insurance (Exhibit I) and until evidence of the required insurance has been reviewed and approved by Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor.
- 13.4 Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of this Master Agreement and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry in general and the claims history of Contractor.
- 13.5 Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by Contractor and not covered by insurance shall be paid by Contractor upon demand, or, to the extent of unpaid fees, shall be deducted by Owner from Contractor's fee.
- 13.6 The cost of premiums for any additional insurance coverage desired by Contractor in excess of that required by this Master Agreement shall be borne solely by Contractor.

**ARTICLE 14  
INDEMNITY**

- 14.1 SEE ARTICLE 3 OF THE UGC'S AND THE SUPPLEMENTARY CONDITIONS FOR **CONTRACTOR'S** GENERAL INDEMNIFICATION OBLIGATIONS.

CM SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND STATE PRESERVATION BOARD and/or THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY OR ARISING FROM OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND /OR OTHERWISE RELATED TO CM'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE CM OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO CM OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CM WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CM MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CM AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 14.2 The indemnities contained in this Master Agreement shall survive the termination of this Master Agreement.

**ARTICLE 15  
SPECIAL WARRANTIES**

- 15.1 Pursuant to Section 2254.0031 of the Texas Government code, which incorporates by reference Section 271.904(d) of the Texas Local Government code, CM shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.
- 15.2 Contractor represents, and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants and subcontractors, and any harm caused by the negligent or improper work or services.
- 15.3 Contractor represents and agrees that all persons connected with Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if such registration and/or license is required.

- 15.4 Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Contractor (by Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.
- 15.5 Contractor represents and agrees to perform its services under this Master Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.
- 15.6 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Master Agreement.
- 15.7 Contractor represents and agrees that the individual executing this Master Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.
- 15.8 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Master Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Master Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future affiliate of Owner or any agent, officer, director, employee, or regent of Owner, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Master Agreement.

#### **ARTICLE 16**

##### **CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK**

- 16.1 Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.
- 16.2 Contractor shall take whatever measures is deemed necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.
- 16.3 All materials used on this Project shall be certified as Non Asbestos Containing Building Materials (non-ACBM). Contractor shall insure compliance with the following acts from all of its subcontractors and assigns:
- 16.3.1 Asbestos Hazard Emergency Response Act and the Regulations promulgated under the Act (AHERA—40 CFR 763, Subpart E);
- 16.3.2 National Emission Standards for Hazardous Air Pollutants (NESHAP— EPA 40 CFR 61, Subpart M, National Emission Standard for Asbestos);
- 16.3.3 Texas Asbestos Health Protection Rules (TAHPR—Tex. Admin. Code Title 25, Part 1, Ch. 295, Subchapter C, Asbestos Health Protection)



- 16.4 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.
- 16.5 Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project.
- 16.6 At Final Completion Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34(c)(1) that no ACBM was used during construction of the project.
- 16.5 If the Contractor encounters hazardous materials not addressed in the Construction Documents and if reasonable precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered by the Contractor, the Contractor shall upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and CM in writing. The Owner shall obtain the services of a licensed Contractor or consultant to test and or remediate the hazard. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

#### **ARTICLE 17 DISPUTE RESOLUTION**

- 17.1 Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by the Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies code Section 14.002 shall be governed by the dispute resolution process set forth in subsections (a)-(d).

#### **ARTICLE 18 MISCELLANEOUS PROVISIONS**

- 18.1 Each Party respectively, binds itself, its partners, successors, assigns and legal representative of such other party with respect to all covenants of this Master Agreement. Neither Party shall assign this Master Agreement without the prior written consent of the other. The Master Agreement is void if sold or assigned to another party without written approval of each party. The Contractor may assign its right to receive payment to such third parties as the Contractor may desire without the prior written consent of the Owner, provided that the Contractor gives written notice (including evidence of such assignment) to the Owner thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Master Agreement and shall not be made to more than one party.
- 18.2 Nothing contained in this Master Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Party.

- 18.3 Substitutions are not permitted without the written approval of the Owner.
- 18.4 Contractor acknowledges and understands that the high work required around the exterior of the Capitol is inherently dangerous and that the undersigned shall be entering the site at its own risk. Contractor is further aware that activities on or about the site may impose risks of personal injury, including death, and property damage. Contractor assumes the responsibilities and risks inherent in a construction site, including unknown risks. Contractor hereby releases, indemnifies and holds harmless the State Preservation Board, its contractors, subcontractors, and suppliers of material and/or equipment, and all persons acting within the scope and course of their employment by, or agency to, any of the above, of and from any and all liability for non-intentional injury, loss or damage to the person or property to which the undersigned may be exposed on the site.
- 18.5 Illegal Dumping. Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.
- 18.6 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the Parties shall be in writing. The Parties may make reasonable changes in the individuals or contact information designated for receipt of notices upon advance written notice to the other party. Written notice shall be deemed to have been given when delivered in person to the designated representative of Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing. Such notices of claims or disputes or other legal notices required by this Master Agreement shall be sent to the persons listed in §19.40.
- 18.7 The Master Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Texas.
- 18.8 The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting agency.
- 18.9 Terms in this Master Agreement shall have the same meaning as those in Uniform General Conditions of the State of Texas.
- 18.10 Parties respectively, bind themselves, their agents, successors, assigns and legal representatives to this Master Agreement. Neither the Owner nor the CM shall assign this Master Agreement without the written consent of the other, except that the Owner may assign this Master Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Master Agreement.
- 18.11 If either Party receives information specifically designated as "confidential" or "business

proprietary," the receiving Party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information

- 18.12 Nothing in this contract shall be construed as a waiver of the State or SPB's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to the State of Texas. The failure to enforce or any delay in the enforcement, of any privileges, rights, defenses, remedies or immunities available to the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. SPB does not waive any privileges, rights, defenses, or immunities available to Agency by entering into this contract or by its conduct or by the conduct of any representatives of Agency, prior to or subsequent to entering into this contract.

#### **ARTICLE 19: SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Master Agreement are as follows:

- 19.1 Independent Contractor: For the purposes of the Contract, the CM shall be considered an independent professional and is not to be considered an employee of the State Preservation Board (SPB) or the State of Texas. The CM may not enter into any agreement or make any representation on behalf of the SPB or the State of Texas. The CM shall be responsible for providing all necessary unemployment and workers' compensation insurance for CM's employees.
- 19.2 Indemnification: The CM shall indemnify and hold harmless the SPB, the State of Texas, all of its officers, agents, and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities including without limitation the costs of defense including reasonable attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of the CM or any agent, employee, subcontractor, or supplier of the CM in the execution or performance of the Contract. The CM shall coordinate its defense with the Texas Attorney General as required by the SPB. This paragraph is not intended to and shall not be construed to require the CM to indemnify or hold harmless the State or the SPB for any claims or liabilities resulting from the negligent acts or omissions of the SPB or its employees.
- 19.3 Funding: The Contract is subject to cancellation, without penalty to the SPB, either in whole or in part, if funds are not appropriated by the Texas Legislature. The SPB is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If the SPB becomes subject to a legislative change, revocation of statutory authority, lack of appropriate funds, or unavailability of funds which would render contractor's delivery or performance under this Contract impossible or unnecessary, this Contract will be terminated, either in whole or in part. In the event of such a termination, the CM shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The SPB shall be liable for payments limited only to the portion of work the SPB authorized in writing and which the CM has completed,

delivered to the SPB, and which has been accepted by the SPB. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

- 19.4 Amendment: The contracting parties, if agreed, may amend the Contract at any time during the Contract's duration. To be valid and binding, such amendments must be in writing and executed by the SPB and the CM. No agent, servant, or employee of the SPB has authority to modify the Contract except by written amendment signed by the Executive Director. Any other attempted changes, including oral modifications, written notices that have not been agreed to by both Parties, or other modifications of any type, shall be invalid.
- 19.5 Notice of Administrative Changes: The CM shall provide written notification of administrative changes, including changes to company name, address, telephone number, and billing instructions, to the SPB as soon as possible, but not later than thirty (30) days from the date of the change.
- 19.6 Confidentiality and Public Information: Notwithstanding any provisions of this Contract to the contrary, the CM understands that the SPB will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The SPB agrees to notify the CM in writing within a reasonable time from receipt of a request for information related to the CM's work under this contract, if such information is held by CM, or if the request pertains to information CM has labeled as proprietary or confidential as described below. CM will cooperate with the SPB in the production of documents responsive to the request. The SPB will make a determination whether to submit a Public Information Act request to the Attorney General. The CM will notify the SPB within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. The CM agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.
- 19.7 Antitrust and Assignment of Claims The CM represents and warrants that neither the CM nor any firm, corporation, partnership, or institution represented by the CM or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas or of the United States; or (2) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.
- 19.8 Affirmation Clauses:
- A. The CM affirms that it has not given, offered to give, or intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract. Any instances of unethical conduct, undisclosed conflicts of interest and/or potential conflicts of interest, and other improprieties by the CM are grounds for termination of the Contract.
- B. The CM certifies that the individual or business entity named in the Contract is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a State agency.

- C. Pursuant to Texas Government Code, Section 2155.004, the CM certifies that the individual or business entity named in the Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitations or specifications for the Contract.
  - D. Pursuant to Texas Family Code, Section 231.006 (relating to child support), CM certifies that the individual or business entity named in the contract is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
  - E. The CM agrees that any payments due under the Contract will be applied toward any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
  - F. The CM certifies that the individual or business entity named in the Contract is eligible to participate in this transaction and that it has not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that the CM is in compliance with the State of Texas statutes and rules relating to procurement and that the CM is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
  - G. CM affirms by signature to this document that it (i) does not boycott Israel and (ii) will not boycott Israel during the term of the contract.
  - H. CM affirms by signature to this document that it is not engaged in active business operations with Sudan, Iran, or any foreign terrorist organization and/or organizations with policies that are anathema to the policy interest of the United States or the State of Texas.
  - I. CM affirms in writing by signature hereto that this contract for CM services to which a governmental agency is a party that the licensed engineer or registered architect performing services will be rendered:
    - (1) with the professional skill and care ordinarily provided by competent engineers or architect practicing under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Nothing in this section prohibits a governmental agency in a contract for engineering or architectural services to which the governmental agency is a part from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.
  - J. CM affirms it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.
- 19.9 Buy Texas: The CM represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a

price and time comparable to products and materials produced outside the state.

- 19.10 Taxes: Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to the SPB.
- 19.11 Supporting Documents, Retention; Right to Audit; Independent Audits: CM shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. CM shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. CM shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in this Contract. CM and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. CM must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by the SPB and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

CM shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. CM's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize the SPB and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Texas Government Code, Section 2262.003 the acceptance of funds by CM or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. CM acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. CM shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through CM and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

- 19.12 Force Majeure: Neither CM nor the SPB shall be liable to the other for any delay in, nor failure of performance, of any requirement resulting from this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- 19.13 No Waiver: This Contract shall not constitute or be construed as a waiver of any of the privileges,

rights, defenses, remedies, or immunities available to the SPB as an agency of the State of Texas or otherwise available to the SPB. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to the SPB under this Master Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. The SPB does not waive any privileges, rights, defenses, remedies, or immunities available to the SPB as an agency of the State of Texas, or otherwise available to the SPB, by entering into this Master Agreement or by its conduct prior to or subsequent to entering into this Master Agreement. The modification of any privileges, rights, defenses, remedies, or immunities available to the SPB must be in writing, must reference this Section, and must be signed by the SPB to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to the SPB shall not constitute waiver of any subsequent privileges, rights, defenses, or immunities under this Master Agreement or under applicable law.

- 19.14 **Damage to Government property:** The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the SPB Contract Manager in writing of any such damage within one (1) calendar day.
- 19.15 **Federal, State, and Local Requirements:** The CM shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. The CM is responsible for both Federal and State Unemployment insurance coverage and standard Workers' Compensation Insurance coverage. The CM shall comply with all Federal and State tax laws and withholding requirements. The SPB shall not be liable to the CM or its employees for any Unemployment or Workers' Compensation coverage, or Federal or State withholding requirements. The CM shall indemnify the SPB and pay to the SPB all costs, penalties, or losses resulting from the CM's omission or breach of this Section.
- 19.16 **Assignment:** The CM may not assign or subcontract this Master Agreement, in whole or in part, without the SPB's prior written consent. The Master Agreement is void if sold or assigned to another company without the written approval of the SPB.
- 19.17 **DTPA:** The CM represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit and that the CM has not been found to be liable for such practices in such proceedings. The CM certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit and those such officers have not been found to be liable for such practices in such proceedings.
- 19.18 **False Statements:** By signature to this Contract, the CM makes all the representations, warranties, guarantees, certifications, and affirmations included in this Master Agreement. If the CM signed its proposal with a false statement or signs this Master Agreement with a false statement or it is subsequently determined that the CM has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, the CM shall be in default under this Master Agreement and the SPB may terminate or void this Master Agreement for cause and

pursue other remedies available to the SPB under this Master Agreement and applicable law.

- 19.19 **Felony Criminal Convictions:** The CM represents and warrants that the CM has not and the CM's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the CM has fully advised the SPB as to the facts and circumstances surrounding the conviction.
- 19.20 **Limitation on Authority:** The CM will have no authority to act for or on behalf of the SPB or the State of Texas except as expressly provided for in the Contract; no other authority, power or use is granted or implied. The CM may not incur any debts, obligations, expenses, or liabilities or any kind on behalf of the SPB or the State of Texas.
- 19.21 **Equal Opportunity:** The CM represents and warrants that it shall comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.
- 19.22 **Immigration Laws:** The CM certifies that all Contractor employees are and will be in compliance with all requirements of the federal Immigration Reform and Control Act of 1986 (Public Law 99-603).
- 19.23 **Direct Deposit:** The electronic funds transfer (EFT) provisions of Texas law were revised by H.B. 2429, which is now in effect. Depending on eligibility under the law, certain payments from the State may be directly deposited into the CM's bank account or may be made by warrant. Vendors who may be eligible for direct deposit and who wish to be paid by direct deposit, must complete the form titled "Vendor Direct Deposit Authorization" and return it as soon as possible to: State Preservation Board, Accounting, P.O. Box 132876, Austin, TX 78711. Comptroller of Public Accounts' Claims Divisions oversees the distribution of the state payments, both warrants (paper checks) and direct deposit. For questions regarding the statewide process, contact the Claims Payment Processing Section, at 1-800-531-5441, ext. 6-2499 or (512) 936-2499, or send an email message to [claims.division@cpa.state.tx.us](mailto:claims.division@cpa.state.tx.us).
- 19.24 **Partially Completed Work:** No later than the seventh calendar day after the termination of this Contract, or at SPB request, the CM shall deliver to the SPB all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Master Agreement. The CM shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the SPB.
- 19.25 **Non-Waiver of Rights:** Failure of a party to require performance by another party under this Contract will not affect the right of such party to require performance in the future. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under this Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a party of any breach of any term of this Contract will not be construed as a waiver of any continuing or succeeding breach.
- 19.26 **Severability:** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.



- 19.27 Prior Agreements Superseded: This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting its subject matter.
- 19.28 Certification Concerning Hurricane Relief: Government Code §2155.006 and §2261.053 prohibit the SPB from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Government Code §418.004, occurring after September 24, 2005. Under Government Code §2155.006 the CM certifies that the individual or business entity named in its proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
- 19.29 Misclassification of Workers: Effective January 1, 2014, Texas Labor Code sec. 214.008 authorizes a penalty to be imposed on a person who contracts for certain services with a governmental entity and fails to properly classify their workers. This section applies to subcontractors directly retained and compensated by a person who contracts with a governmental entity.
- 19.30 Subcontracts: In any approved Subcontracts, CM shall legally bind such Subcontractor to perform and make such Subcontractor subject to all the duties, requirements, and obligations of CM specified herein. Nothing herein shall be construed to relieve CM of the responsibility for ensuring that the goods delivered and/or the services rendered by Contractor and/or any of its Subcontractors comply with all the terms and provisions of this Contract. CM will provide written notification to SPB of any such Subcontractor performing work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to work on the task.
- 19.31 Historically Underutilized Businesses (HUBs): In accordance with State law, it is SPB's policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. SPB encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Contractor's obligations with SPB. If Contractor subcontracts with others for some or all of the services to be performed under this Contract, Contractor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 and file with SPB a HUB Subcontracting Plan.
- 19.32 Employment Eligibility  
Contractor assures SPB that all employees are legally eligible to work in the State of Texas and all required employment verification procedures have been used to establish employment eligibility. Unverified workers on site may be cause for termination of the Contract. Workers who are not legally qualified to work in Texas will be cause for termination of the contract.
- 19.33 Human Trafficking:  
Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this contract or response is not ineligible to receive

the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

- 19.34 Suspension and Disbarment: CM certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas *Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.
- 19.35 Former Agency Employee, Professional Services or Consulting: Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of SPB during the twelve (12) months period immediately prior to the date of execution of the contract.
- 19.36 Change in Law and Compliance with Laws: Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- 19.37 Force Majeure: Neither Contractor nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- 19.38 Financial Participation Prohibited Affirmation: Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named herein is eligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is Inaccurate.
- 19.39 Firearm Entities and Trade Associations Discrimination: Contractor verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, CM shall promptly notify Agency.
- 19.40 Energy Company Boycotts: CM represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, CM shall promptly notify Agency.

19.41 COVID-19 Vaccine Passport Prohibition: CM certifies that it does not require its customers to provide any documentation certifying the customer’s COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the CM’s business. CM acknowledges that such a vaccine or recovery requirement would make CM ineligible for a state-funded contract.

19.42 Notice: Any notice required or permitted to be given pursuant to the Agreement shall be in writing and sent to the address set forth below. Notice shall be deemed delivered on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service.

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

If to Owner:	Rod Welsh, Executive Director, <i>and</i> Kevin Koch, Project Manager
State Preservation Board	
	P.O. Box 13286 Austin, TX 78711 Fax No. 512.475.3366 <a href="mailto:roderick.welsh@tspb.texas.gov">roderick.welsh@tspb.texas.gov</a> <a href="mailto:kevin.koch@tspb.state.texas.gov">kevin.koch@tspb.state.texas.gov</a>

If to Contractor: XX.

Attn: XX  
XX  
XX  
Email: XX

BY SIGNING BELOW, the Parties have executed and bound themselves to this Master Agreement as of the day and year first above written.

**OWNER**  
**STATE PRESERVATION BOARD**  
By Roderick Welsh, Executive Director

**CONTRACTOR**  
**XX**  
XX

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Leslie Pawelka, Attorney

Date: \_\_\_\_\_

List of Exhibits

The following exhibits are fully incorporated into this Master Agreement by reference:

- Exhibit A 2015 Uniform General Conditions, Supplementary General & Special Conditions, attached by reference
- Exhibit B Owner's Requirements (From RFQ)
- Exhibit C Specific Cost Terms and Agreed Compensation (Pending RFQ Response)
- Exhibit D Agreed General Conditions Costs (Pending RFQ Response)
- Exhibit E Wage Rates (To be pulled from Davis Bacon Travis County Determination as of contract date)
- Exhibit F Monthly Salary Rates for Contractor Personnel Assigned to Project (Pending RFQ Response)
- Exhibit G Historically Underutilized Business Subcontracting Plan(From RFQ)
- Exhibit H Summary of Contractor's Proposed Project Schedule dated October 14, 2015 (Pending RFQ Response)
- Exhibit I Insurance Requirements (From RFQ)
- Exhibit J Guaranteed Maximum Price Proposal Form
- Exhibit K Request for Qualifications (RFQ) for Construction Manager-at-Risk, XX, 20XX, attached by reference only
- Exhibit L Contractor's Responses to Request for Qualifications (RFQ) for Construction Manager-at-Risk, XX, 20XX, attached by reference only

## Exhibit J

GUARANTEED MAXIMUM  
PRICE PROPOSAL DOCUMENT

**1. Guaranteed Maximum Price #1 for Texas Capitol Roof Replacement and Rehabilitation Project**

1.1 As of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ pursuant to this Agreement and for the Texas Capitol Roof Replacement and Rehabilitation Project ("**Project**") defined in the Contract Documents, the Owner and the CM/GC desire to set a GMP for the Project.

1.2 The GMP has been developed by the CM/GC from the design drawings and specifications and such other documents as identified in Attachment A to this GMP#1. The Contractor's inclusions, exclusions, and/or clarifications are identified in Attachment B. A detailed breakdown of costs and subcontracts is attached as Attachment C.

1.3 The Guaranteed Maximum Price is (\$ \_\_\_\_\_) for the Project. The GMP is for the Work described in the Contact Documents. Documentation of the GMP is attached as Attachment B of this GMP. No individual work item or division of the Work is guaranteed, except as provided in Paragraph 1.3.2, but rather the sum total of all divisions and line items shown in Attachment B is guaranteed as the maximum price of the Project.

1.3.1 The GMP documentation, attached hereto as Attachment B of this GMP and made a part hereof by reference, includes costs for all Work disciplines or trades required for the Project and shall incorporate allocated costs for the CM/GC's Fee and the general conditions (Exhibit B and C of the Master Agreement). The GMP is for all of the items included in the total Cost of the Project and not the cost for each or any number of divisions of the Project, unless otherwise specified.

1.3.2 The CM/GC's compensation for site general conditions shall be an allocated portion of the fixed amount in the Master Agreement. The allocated portion for this GMP #1 shall be included in GMP #1. In the event that the CM/GC's costs for site general conditions exceed the amount specified in the GMP, as amended by subsequent Change Orders, the CM/GC shall complete the Work defined by the Contract at no additional cost for site general conditions to the Owner. The allocated portion shall be agreed upon by the Parties.

1.4 The date established in this GMP#1 for Substantial Completion of the Project shall be \_\_\_\_\_. See CM/GC Construction Schedule for GMP #1 (Attachment D). In no case shall the schedule extend past February 3, 2012 unless the overall Project Schedule is extended by amendment to the Master Agreement.

1.5 In the event that the Cost of the Project exceeds the GMP, the CM/GC shall continue

to perform at no additional cost to the Owner until Final Completion of the Project. The CM/GC shall be responsible for paying all costs, in accordance with the terms of the Agreement that may be necessary to complete the Project, even if such amounts are in aggregate in excess of the GMP.

**2. Guaranteed Maximum Price Execution**

The Guaranteed Maximum Price (GMP #1) is hereby executed below in this Exhibit J-1 after submission and subsequent agreement of the Guaranteed Maximum Price between the Owner and the CM/GC and hereby is incorporated into the Agreement, effective xxxxx, between Contractor and Owner for the Texas Capitol Roof Replacement and Rehabilitation Project.

**OWNER:**

**CONSTRUCTION  
CONTRACTOR:**

**MANAGER/GENERAL**

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_