

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND FORT HILL ASSOCIATES

This Master Services Agreement (hereafter referred to as “MSA”) is entered into and effective upon final execution (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “A&M System”), an agency of the state of Texas, and Fort Hill Associates (hereafter referred to as “Provider”). A&M System and Provider are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

A&M System and Provider hereby agree as follows:

1. SCOPE OF WORK

Provider will work with the A&M System to provide construction closeout auditing services for construction projects utilizing construction manager at risk (CMAR) and design-build (DB) delivery methods on an as needed basis. The services included (but not limited to) in the scope of this MSA are listed in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The initial term of this MSA shall begin upon final execution and will extend through August 31, 2023. This MSA can be extended for two additional one (1) year terms upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the Provider.

3. PAYMENT TERMS

- A. A&M System shall not pay any costs or fees as a direct result of this MSA. For services rendered as a result of this MSA, the A&M System or Member shall pay Provider for the services based on fees negotiated at the time a project(s) is assigned, to include reimbursables.
- B. Provider shall invoice A&M System or Member for amounts due consistent with the “Payment Schedule” as negotiated per project. For reimbursement of travel expenses, Provider’s invoice(s) must include supporting documents. Payment will be made to Provider upon approval of such invoice by TAMUS. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- C. Business-related travel, lodging and/or meal expenses will be reimbursed by TAMUS according to the State of Texas rates, rules, and regulations. Provider is required to submit all travel receipts when requesting reimbursement. Under no circumstance will the Provider be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (Provider’s place of business to job site) using the State of Texas mileage. Should the contract be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.

If the Provider’s place of business is located more than 60 miles from the job site, then a round trip charge of \$120 per trip will be allowed, regardless of the number of people in a vehicle(s) and of the time it takes to reach the site. This is to help offset personnel travel time which is NOT chargeable. If your Provider’s place of business is located closer than 60 miles to the job site, a

round trip charge will not be allowed. State of Texas mileage reimbursement guidelines still apply in either case.

Overtime and holidays will be paid at straight time.

- D. All payments shall be made by electronic direct deposit. If not already setup, Provider is required to complete and submit to A&M System or Member a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at; <https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>.
- E. All invoices must reference the purchase order number issued for a specific project and include the description of services provided as well as time, deliverables, and activities. Invoices will be processed for payment upon approval by the appropriate A&M System personnel.
- F. Invoices are to be sent to e-Builder with the appropriate link provided in the purchase order for each specific project.

4. DEFAULT AND TERMINATION

- A. For Cause: In the event of substantial failure by Provider to perform in accordance with the terms hereof, A&M System may terminate this MSA upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior by the end of the fifteen-day period), provided that said failure is through no fault of A&M System.
- B. For Convenience: A&M System may terminate this MSA at any time upon thirty (30) days prior notice to Provider.
- C. Termination of this MSA for either of the reasons stated above shall not terminate any Member specific agreement or purchase order. Refer to Section 8.M for survivability of terms beyond termination of this MSA.

5. PUBLIC INFORMATION

- A. Provider acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this MSA, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System's written request, Provider will promptly provide specified contracting information exchanged or created under this MSA for or on behalf of A&M System.
- C. Provider acknowledges that A&M System may be required to post a copy of the fully executed MSA on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this MSA and the Provider agrees that the MSA can be terminated if the Provider knowingly or intentionally fails to comply with a requirement of that subchapter.

6. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and Provider to attempt to resolve any claim for breach of contract made by Provider that cannot be resolved in the ordinary course of business. Provider shall submit written notice of a claim of breach of contract under this Chapter to Billy Hamilton, Deputy Chancellor and Chief Financial Officer for A&M System, who

shall examine Provider's claim and any counterclaim and negotiate with Provider in an effort to resolve the claim.

7. INSURANCE

Insurance requirements as stated within Exhibit B, attached hereto.

8. MISCELLANEOUS

- A. **Indemnification.** Provider agrees to indemnify and hold harmless A&M System from any claim, damage, liability, expense or loss to the extent arising out of Provider's negligent or willful errors or omissions under this MSA.
- B. **Independent Contractor.** Provider is an independent contractor, and neither Provider nor any employee of Provider shall be deemed to be an agent or employee of A&M System. A&M System will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Provider shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of A&M System relative to conduct on its premises.
- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, Provider agrees that any payments owing to Provider under this MSA may be applied directly toward certain debts or delinquencies that Provider owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** Provider acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits A&M System from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Provider is an individual, by signing this MSA, Provider certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- F. **Not Eligible for Rehire.** Provider is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this MSA.
- G. **Franchise Tax Certification.** If Provider is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Provider certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Provider is exempt from the payment of franchise (margin) taxes.

- H. **State Auditor's Office.** Provider understands that acceptance of funds under this MSA constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Provider agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Provider will include this provision in all contracts with permitted subcontractors.
- I. **Entire Agreement.** This MSA constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this MSA. This MSA may not be amended or otherwise altered except upon the written agreement of both parties.
- J. **Severability.** If any provisions of this MSA are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this MSA, as modified, enforceable, and the remainder of this MSA and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- K. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this MSA and shall not be used to construe it.
- L. **Non-Assignment.** Provider shall neither assign its rights nor delegate its duties under this MSA without the prior written consent of A&M System.
- M. **Survivability.** The Provider's duties under this MSA, Member specific agreement and/or purchase order, which impose an obligation after expiration or termination of this MSA, will survive unless otherwise stated within the Member specific agreement and/or purchase order.
- N. **HUB Subcontracting Plan.** If awarded a project as a result of this Agreement, the PROVIDER may be required to complete a HUB Subcontracting Plan ("HSP") in full per the instructions below within fourteen (14) days from the notice to proceed for that specific project.
- a. Complete Section 1
 - b. Complete Section 2a through d.
 - c. Complete Section 4
 - d. Complete Method A or B as applicable depending on your response to questions in Section 2c-d. If subcontracting, the HUB goal to be used to determine the applicable method is **10%** for Other Services. Below are the instructions for each Method;
- Method A:** Provide Method A (Attachment A) for each opportunity identified in Section 2b of the HSP and complete all sections. Section A-2 shall include all subconsultants selected for that opportunity, both HUBs and non-HUBs.
- Method B:** Provide Method B (Attachment B) for each opportunity identified in Section 2b. Reminder that all supporting documentation listed in Section B-3 shall be provided as part of this attachment. The following are additional items of note as part of the good faith effort required:
- The respondent shall provide potential HUB subcontractors reasonable time to respond to the respondent's notice. "Reasonable time to respond" in this context is no less than seven (7) working days from receipt of notice, unless circumstances require a different time period and it is approved by A&M System in writing.

- The respondent shall use the State of Texas Centralized Master Bidders List (CMBL), HUB Directory, internet resources, and/or other directories as identified by the State of Texas or the A&M System HUB Program Office when searching for HUB subcontractors. **A complete list of all State of Texas certified HUBs may be electronically accessed at;**
<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>
- The respondent shall provide the notice described in this section to **three (3) or more** HUBs for **each** subcontracting opportunity as stated in Section B3a. The A&M System encourages respondents to seek and find a “Diverse Group” of Historically Underutilized Businesses in each category in which a subcontract of services is solicited.
- The respondent shall provide notice to minority and women business trade organizations or development centers that assist in identifying HUBs by disseminating opportunities to their membership/participants. A list of possible organizations/centers can be found at the following site;
<https://comptroller.texas.gov/purchasing/vendor/hub/resources.php>
- The respondent shall negotiate in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder.
- Provide written justification of the selection process if a non-HUB subcontractor is selected in Section B-4c.

- O. **Force Majeure.** Neither party will be in breach of its obligations under this Agreement or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure event (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure event had not occurred. “Force Majeure event” is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform its obligation(s). Written notice of a party’s failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). For the avoidance of doubt, the COVID-19 pandemic and any governmental changes or closures related thereto shall be deemed Force Majeure events, even to the extent reasonably foreseeable by either party as of the effective date of this Agreement.
- P. **Loss of Funding.** Performance by a Member under this MSA and Member specific agreement or purchase order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary

funds, the impacted Member may issue written notice to Provider and Member may terminate their Member specific agreement or purchase order without further duty or obligation hereunder. Provider acknowledges that appropriation of funds is beyond the control of A&M System and its Members.

- Q. **Governing Law.** The validity of this MSA and all matters pertaining to this MSA, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- R. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- S. **Non-Waiver.** Provider expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this MSA will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- T. **Conflict of Interest.** By executing this MSA, Provider and each person signing on behalf of Provider certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this MSA, or in the services to which this MSA relates, or in any of the profits, real or potential, thereof.
- U. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 applies to this MSA, Provider certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this MSA. Provider acknowledges this MSA may be terminated and payment withheld if this certification is inaccurate.
- V. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Provider certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Provider acknowledges this Purchase Order may be terminated if this certification is or becomes inaccurate.
- W. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- X. **Records Retention.** Provider will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the MSA for the duration of the MSA and for seven years after the conclusion of the MSA.
- Y. **Notices.** Any notice required or permitted under this MSA must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. A&M System and Provider can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

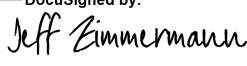
A&M System: The Texas A&M University System

301 Tarrow St., Suite 273
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
Fax: (979) 458-6250
E-mail: jzimmermann@tamus.edu

Provider: Fort Hill Associates
37 Villa Road, Suite 106
Greenville, South Carolina 29615
Phone: (877) 286-0408 x302
Email: dplyler@forthillassociates.com

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this MSA as of the Effective Date.

The Texas A&M University System

DocuSigned by:

By E2BE2924E69547F...
Jeff Zimmermann
Director, Procurement & Business Services

10/13/2020 | 09:50:07 CDT
Date

Fort Hill Associates

DocuSigned by:

By 7A4C7813F52B444...
Martin Howell
Principal

10/13/2020 | 07:49:31 PDT
Date

EXHIBIT A – SCOPE

Services Required

Specific requirements include, but are not limited to, the following activities:

- Perform a review of billings on construction manager at risk (CMAR) and design-build (D-B) projects for compliance with terms of agreements prior to final payment. Review to include but not limited to general conditions costs and supporting documentation and subcontractor and purchase order amounts compared with schedule of values.
- Provide a written report to FPC on findings of reviews and any potential cost recovery items.

Project Assignments

Construction auditing services will be assigned when required on a FP&C project or projects from the pool of vendors established by this RFQ. Note that inclusion in the pool is not a guarantee of work or project assignments. Below describes the process typically used by the FP&C office regarding assignment of a project or projects.

- Request sent to all vendors from our pool to submit a not to exceed quote, resumes of personnel and timeline for the audit based on an audit scope.
- FP&C reviews responses based on cost, qualifications, experience, and any other factor deemed relevant to make a selection. In many cases cost may be the determining factor. FP&C's decision on each project selection shall be final.
- Upon approval of selection, the vendor will be issued a purchase order and a contact person to begin the audit.

EXHIBIT B – INSURANCE

Provider shall obtain and maintain, for the duration of this MSA or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to Provider under this MSA. Provider shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Provider is not relieved of any liability or other obligations assumed pursuant to this MSA by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

Insurance:**Coverage****Limit****A. Worker's Compensation**

Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

Statutory
\$1,000,000 Each Accident
\$1,000,000 Disease/Employee
\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

C. Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures Provider's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this MSA

D. Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured's.

E. **Professional Liability (Errors & Omissions)**

Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Provider and its subcontractors under this MSA. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this MSA. If coverage is written on a claims-made basis, Provider agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this MSA.

F. Provider will deliver to A&M System:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this MSA and prior to the performance of any services by Provider under this MSA. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by Provider. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by Provider under this MSA. Provider is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this MSA will be emailed to the following A&M System contact in SOProurement@tamus.edu.

The insurance coverage required by this MSA will be kept in force until all services have been fully performed and accepted by A&M System in writing, except as may be noted.