

CITY OF CORPUS CHRISTI

FACILITIES MULTIPLE AWARD CONTRACT MASTER AGREEMENT

This Agreement is entered into on _____, 2016, between the City of Corpus Christi, a Texas home rule municipal corporation, P.O. Box 9277, Corpus Christi, Nueces County, Texas 78469-9277 (City) acting through its duly authorized City Manager or designee and Spaw Glass, a Texas Corporation, 4909 E. Grimes, Suite 116, Harlingen, Texas 78550 (Contractor).

WHEREAS, Texas Government Code Chapter 2269, Subchapter I authorizes the City to contract for the maintenance, repair, alteration, renovation, remediation or minor construction of city-owned facilities when the work is of a recurring nature but the delivery times, type and quantities of work required are indefinite;

WHEREAS, the City's Department of Engineering Services issued a Request for Proposals No. 2016-04 - Master Agreement for Facilities Multiple Award Contract (FMAC) for the Minor Construction, Repair, Rehabilitation and Alteration of Facilities to provide services on an on-call or as-needed basis, through individually priced task orders for the maintenance, repair, alteration, renovation, remediation or construction of facilities; and

WHEREAS, Contractor submitted a proposal in response to the RFP (Proposal) and was selected for recommendation for award; and

WHEREAS, the parties desire to enter into a Facilities Multiple Award Contract Master Agreement (Agreement) to set the terms and conditions the parties must follow;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I – FACILITIES MULTIPLE AWARD CONTRACT PROGRAM

- 1.1 The City has awarded or will award one or more FMAC Master Agreements.
- 1.2 This Agreement consists of the following Contract Documents, which specify the terms and conditions that the parties agree to comply with throughout the term of the Agreement:
 - 1.2.1 RFP No. 2016-04 and Addenda,
 - 1.2.2 Contractor's Proposal, including all attachments and exhibits, submitted in response to RFP No. 2016-04 (**Exhibit A**),
 - 1.2.3 this FMAC Master Agreement, including all attachments and exhibits
 - 1.2.4 Specifications, forms and documents listed in SECTION 00 01 00 TABLE OF CONTENTS.
- 1.3 The parties agree to comply with the Agreement and any additional terms and conditions specified in the FMAC Task Orders issued hereunder.
- 1.4 This Agreement is a competitively awarded master agreement with an undefined State of Work (SOW). The work is of an indefinite quantity and a recurring nature, delivered on an on-call or as-needed basis, through individually priced FMAC Task Orders (Order). The Agreement may support a broad assortment of facilities construction work, including maintenance, repair,

alteration, renovation, remediation or minor construction.

- 1.5 This Agreement and any Task Order applies only to a facility that is a building, or a structure or land, whether improved or unimproved, that is associated with a building. The City currently owns approximately 1200 properties that require a variety of minor construction, repair, rehabilitation or alteration services, including but not limited to services for three areas: general, mechanical/electrical/plumbing (MEP) and roofing.
 - 1.5.1 Minor construction may include a range of services from new office construction (as well as demolition) to completing a new floor plan, etc.
 - 1.5.2 Repair is defined as work that involves the reparation of a broken system, component or sub-component of a building such as doors, electrical outlets, plumbing, flooring, sheetrock and/or air conditioning systems, etc.
 - 1.5.3 Rehabilitation is defined as work that involves the restoration of an office, floor, system or component of a system in order to restore functionality.
 - 1.5.4 Alteration is defined as work that involves extending a wall, upgrading lighting fixtures, installing a door where one did not exist, replacing flooring, etc.
- 1.6 Contractor must provide all labor, services, equipment, materials, tools, transportation, mobilization, insurance, subcontracts, bonds, supervision, management, reports, incidentals and quality control necessary to complete all services agreed to in a timely manner as required by the Contract Documents throughout the term of the Agreement.
- 1.7 Contractor's Project General Manager shall be knowledgeable in multiple disciplines, including electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing.
- 1.8 Contractor may be required to submit a Safety Plan to the City within 15 calendar days after Award of Agreement. The Safety Plan must address all aspects of the Contractor's safety procedures, including responsibility for OSHA compliance, drug testing, trend analysis, corrective action and interface with City inspectors.

ARTICLE II – PERIOD OF SERVICE AND COMPENSATION

- 2.1 The base term of this Agreement is for two years with the option to administratively renew annually for not more than three additional years.
- 2.2 The maximum aggregate price for work during any one year of this Agreement's term is **\$2,000,000.00**.
- 2.3 City shall pay Contractor in current funds for performance of each Order in accordance with both this Agreement and the Order as the work progresses.
- 2.4 This Agreement provides for no guaranteed minimum amount of Orders, no amount of work and no dollar amount.
- 2.5 All funding obligations of the City under this Agreement are subject to the appropriation of funds in its annual budget.

ARTICLE III - FMAC TASK ORDER

- 3.1 The Facilities Multiple Award Contract Task Order (Order) will be for a defined Statement of Work to be performed within a set time period.
- 3.2 With the exception of emergencies, each Order will be competitively procured by requesting sealed proposals from each FMAC Contractor.
 - 3.2.1 The Request for Task Order Proposal (RFTOP) will specify the date and time that sealed proposals will be publicly opened.
 - 3.2.2 The RFTOP will include evaluation criteria, including but not limited to, price, past performance, past experience with similar sites, knowledge and capability of personnel, capacity, safety and other factors that directly impact the quality of work to be delivered.
 - 3.2.3 The City shall have the right to reject all proposals, cancel a proposed project or elect to perform work utilizing city personnel. The City shall not be responsible for payment or costs incurred by the Contractor for the preparation and submission of a Task Order Proposal regardless of project outcome.
- 3.3 Each FMAC Task Order Agreement will incorporate by reference this Agreement. Contractor must comply with the terms and conditions of this Agreement throughout the term of the Agreement and during the performance of each Order.
- 3.4 Contractor shall construct and complete the improvements according to the Plans and Specifications in a good and workmanlike manner for the prices and conditions set out in the Contractor's Order Proposal and as provided under this Agreement and the Order Agreement.
- 3.5 Contractor must not begin work on any Task Order authorized under this Agreement until they are briefed on the scope of the Project and are notified in writing to proceed.
- 3.6 Contractor shall provide performance and payment bonds if required by law based on the amount of the Order or if otherwise required by the City. At a minimum, the Contractor will be required to provide a payment bond on all Orders that exceed \$50,000 and a performance bond on all Orders that exceed \$100,000.
- 3.7 In the event that design services, construction drawings and/or plans are required, the City shall obtain these services from city resources or from a third-party consultant. The Contractor will not be permitted to contract with or hire consultants.
- 3.8 Contractor shall warrant that work performed conforms to the Task Order requirements and is free of any defect in equipment, material or design furnished or workmanship performed by the Contractor or any of its subcontractors or suppliers at any tier. All work provided by the Contractor shall be warranted for a minimum period of one year from the date of final acceptance of the Work. Equipment warranties shall be as required under the Statement of Work.

ARTICLE IV – SCHEDULING OF WORK

- 4.1 The first day of performance shall be the effective date specified in the Task Order Agreement. Any preliminary work started, materials ordered or purchased prior to receipt of the City's Notice to Proceed shall be at the Contractor's risk and expense.

- 4.2 The Contractor shall meticulously prosecute the Work to completion within the time set forth in the Task Order.
- 4.3 The period of performance shall include allowance for mobilization, holidays, weekends, inclement weather, cleanup and project acceptance procedures.
- 4.4 When the Contractor considers the Work to be complete and ready for its intended use, Contractor shall notify the Director of Engineering Services or designee. The City shall inspect the Work to determine the status for completion. The Contractor shall promptly proceed to complete or correct listed items.
- 4.5 Contractor shall ensure that the purchase, delivery and storage of materials and equipment shall be made without interference to the City operations and personnel.
- 4.6 Contractor shall be responsible for removing furniture and/or portable office equipment from the immediate work area as well as replacing to its original location upon work completion. In the event that said items cannot be replaced within its original location, the City shall designate alternate location(s) for placement.
- 4.7 Contractor shall take all necessary precautions to ensure that no damage shall result from operations to private or public property. All damages must be repaired or replaced by the Contractor at no additional cost to the City.
- 4.8 Contractor shall be responsible for providing all necessary traffic control, to include but is not limited to, street blockages, traffic cones, flagmen, etc. as required for each Task Order. Proposed traffic control methods must be submitted to the City for approval prior to commencement of work.
- 4.9 Contractor shall be responsible for obtaining all required permits applicable to performance under any single order placed against this contract. The City shall be responsible for the cost of any and all City permits.

ARTICLE V – “GREEN BUILDING” PROGRAM

- 5.1 In an effort to conserve resources, as well as, preserve our environment, the City is in the process of developing a program to support a “Green Building” policy for all new city-owned and funded facilities. A “green building,” also known as a high performance building, shall include a structure or facility that is designed, built, renovated and operated in a resource-efficient and healthful manner. Green buildings are designed to meet certain objectives such as: conserve energy and water, use renewable, recyclable or reclaimed materials, protect occupant health, optimize use of local and regional resources, and reduce the overall impact of that new structure to the environment. The program initiatives for a “Green Building” policy may include the following:
 - 5.1.1 All new buildings and major renovations constructed by the City of Corpus Christi or its contractors and funded directly by the City of Corpus Christi shall be designed and constructed with economical and technically feasible green building components.
 - 5.1.2 The City of Corpus Christi shall focus this green building policy in an effort to meet the requirements of the Texas Emissions Reduction Plan, specifically Chapter 388 of the Texas Health and Safety Code. Section 388.005 states that certain political subdivisions

should: (a) implement all cost effective "energy efficiency measures" in order to reduce electric consumption by the existing facilities, (b) establish a goal to reduce electric consumption by its facilities of five percent each year for five years, and (c) annually report to State Energy Conservation Office (SEC) its efforts and progress in reduction of electricity.

- 5.1.3 City staff will develop a green building program for the city facilities targeted in this policy. This green building program will describe the standards of the green building components, including standards for energy efficiency, renewable materials, water conservation, air flow and site location. This program shall also describe the target buildings, exemptions and methods to achieve the goals of this policy. The development of this plan will include an evaluation of the AIA "2020 Challenge," the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED), and the Environmental Protection Agency's Energy Star Program. Feasible components of these programs will be incorporated into this plan. A review of the accomplishments made under this plan shall be reported to City Council annually.
- 5.1.4 All maintenance practices performed by the City of Corpus Christi shall incorporate energy efficiency and green building practices.

ARTICLE VI – INDEMNIFICATION

CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and/or property damage made upon the CITY, directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this CONTRACT, including any acts or omissions of CONTRACTOR and/or CONTRACTOR'S agent, officer, director, representative, employee, consultant or subcontractor while in the exercise of performance of the rights or duties under this CONTRACT, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

It is the EXPRESS INTENT of the parties to this CONTRACT that the INDEMNITY provided for in this section is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENCE ACT of the City is a CONTRIBUTORY CAUSE of the

resultant injury, death or damage and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY AND WITH COUNSEL ACCEPTABLE TO THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death or damage for which this INDEMNITY shall apply, as set forth above.

CONTRACTOR shall advise the CITY in writing, within 24 hours, of any claim or demand against the CITY or CONTRACTOR, known to CONTRACTOR, related to or arising out of activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

ARTICLE VII - INSURANCE REQUIREMENTS

- 7.1 Texas law requires that contractors, subcontractors and others must be covered under Workers' Compensation insurance, authorized self-insurance or a workers' compensation coverage agreement. Throughout this Agreement, such coverage must be provided. Contractor shall comply with the Insurance Requirements for Workers' Compensation Coverage as described and shown in the Notice to Contractors, attached as **Exhibit B**.
- 7.2 Contractor shall comply with the Insurance Requirements as described and shown in **Exhibit B**.

ARTICLE VIII - TERMINATION OF AGREEMENT

- 8.1 The City may, at any time, with or without cause, terminate this Agreement upon seven days written notice to the Contractor at the address of record.
- 8.2 In this event, the Contractor will be compensated for its services on all work completed and accepted by the City at the time of termination.

ARTICLE IX – RIGHT OF REVIEW AND AUDIT

9.1 Contractor grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Contractor's records relating to the performance of the Work under this Agreement, during the term of this Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under this Agreement, then such retention period shall extend until final resolution of the dispute.

9.2 "Contractor's records" include any and all information, materials and data of every kind and character generated as a result of the Work under this Agreement. Examples include billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies,

procedures, federal and state tax filings for issue in questions and any and all other agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

9.3 City agrees that it shall exercise the right to audit, examine or inspect Contractor's records only during City's regular business hours. Contractor agrees to allow City's designee access to all of Contractor's records, Contractor's facilities and Contractor's current or former employees, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Contractor also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

9.4 Contractor shall include this audit clause in any subcontractor, supplier or vendor contract.

ARTICLE X – OTHER PROVISIONS

10.1 Entire Agreement. This Agreement, including Task Orders, represents the entire and integrated Agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the City and Contractor.

10.2 Controlling Law. This Agreement is governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in Nueces County, Texas. All legal proceedings must be filed, tried and cannot be removed from Nueces County, Texas.

10.3 Severability. If, for any reason, any one or more Articles and/or paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles and/or paragraphs of this Agreement but shall be confined in its effect to the specific Article, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any Article, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

10.4 Independent Contractor. Contractor, it and all persons designated by it to provide services in connection with this Agreement or any Task Order Agreement executed pursuant to this Agreement, is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions, and City shall in no way be responsible for Contractor's actions and neither party hereto will have authority to bind the other or to hold out to third parties that it has such authority.

10.5 Captions. The captions, titles and headings in this Agreement are merely for convenience of the parties and shall neither limit nor amplify the provisions of the Agreement itself.

10.6 Notices to be given by either party to the other relative to this Agreement shall be in writing. Both parties agree that any such notice shall be effective when personally delivered or deposited, postage paid, in the U.S. Mail addressed by certified mail, return receipt request, as follows:

CITY: City of Corpus Christi
Attn: Jeff Edmonds, Director of Engineering Services
1201 Leopard Street, 3rd Floor
Corpus Christi, TX 78401
Fax: 361-826-3501

CC: City of Corpus Christi

Attn: Veronica Ocanas, Assistant City Attorney
1201 Leopard Street, 5th Floor
Corpus Christi, TX 78401
Fax: 361-826-3239

CONTRACTOR: Name: Eric Kennedy
Title: President, South Texas Division
Address: 4909 E. Grimes, Suite 116, Harlingen, TX 78550
Telephone: (956) 412-9880
Fax:
Email: eric.kennedy@spawglass.com

CITY OF CORPUS CHRISTI

J. H. Edmonds, P. E., (Date)
Director of Engineering Services

APPROVED AS TO LEGAL FORM

Assistant City Attorney (Date)
for City Attorney

ATTEST

Rebecca Huerta, City Secretary

SPAW GLASS

Eric Kennedy (Date)
President, South Texas Division
4909 E. Grimes, Suite 116
Harlingen, TX 78550
(956) 412-9880 Office

7/7/16

Facilities Multiple Award Contract (FMAC)
for the Minor Construction, Repair,
Rehabilitation, and Alteration of Facilities

Attachments Available Upon Request