

**MASTER AGREEMENT**  
**(Subcontractor)**

This Master Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Straub Construction Company, Inc., 7775 Meadow View Drive, Shawnee, Kansas 66227, a Kansas corporation (hereafter "Contractor"), and \_\_\_\_\_ (hereafter "Subcontractor").

For and in consideration of the mutual covenants and promises contained herein, Contractor and Subcontractor agree as follows:

**General**

This Master Agreement is a written understanding between Contractor and Subcontractor containing contract clauses applying to future Subcontract Work Orders (hereafter "Work Orders") between Contractor and Subcontractor for the furnishing of construction and construction related services, which may include, but not be limited to, design services. This Master Agreement contemplates separate future Work Orders that will incorporate by reference and attach the requirements, applicable clauses and documents agreed to herein and incorporated by reference.

**Owner Contract Documents**

The Owner Contract documents may consist of the Owner's original Solicitation for Bids - Request for Proposal (RFP) similar document, Owner's Amendments to the Solicitation or RFP and Owner's Award of the Contract to Contractor together with the Owner/Contractor Contract ("Owner/Contractor Contract Documents"). The Owner/Contractor Contract Documents generally contemplate the performance of construction work and services by Contractor for Owner.

**Incorporation by Reference**

The Owner/Contractor Contract Documents are incorporated herewith by reference into this Master Agreement and may be attached to this Agreement or any Work Orders issued to Subcontractor. All of the Owner/Contractor Contract documents are available for inspection by Subcontractor at reasonable times at Contractor's office (exclusive of Contractor's pricing information).

The terms and conditions of this Master Agreement, and all documents incorporated by reference herein, regarding work to be performed hereunder, shall be in addition to and not in lieu of, any terms and conditions of the Owner/Contractor Contract Documents.

**Confidentiality Agreement**

To the extent disclosed to Subcontractor, Contractor's bid or response to the Owner's Solicitation RFP, as amended, is proprietary in nature, and shall be kept confidential by

Subcontractor, and not disclosed to any third person or firm, except as necessary for the performance of the Work by Subcontractor under the Subcontract and issued Work Orders. It shall be disclosed for no other purpose without the prior written consent of Contractor. This Confidentiality Agreement includes Contractor's developments, confidential information, know how, discussions, production methods, estimating systems, and historical cost data whether in paper or electronic form.

Contractor shall be entitled to enforce this Confidentiality Agreement by injunctive relief, or other relief available to Contractor, in law or equity, and Subcontractor consents to subject matter jurisdiction and personal jurisdiction of Subcontractor, as well as exclusive venue, in the District Court of Johnson County, Kansas, or in the United States District Court for the District of Kansas, at Kansas City, Kansas, at Contractor's election. Kansas law shall apply to the construction and interpretation of this Master Agreement, the Subcontract and Work Orders. This Confidentiality Agreement is not intended to restrict competition by Subcontractor in any way.

### **Subcontract and Work Orders**

Contractor anticipates that from time to time Owners may award to Contractor individual and separate contracts for specific construction projects or scopes of work, labor, material, equipment, supplies and design services and/or related construction services to be provided to Owner by Contractor under, and pursuant to, Owner/Contractor Contracts. The general scope of work called for by Contractor will be set forth in the Owner/Contractor Contract Documents.

Contractor, in its sole discretion, may issue to Subcontractor an individual Work Order for some or all of the work and services required of Contractor in the Owner issued Contract to Contractor. Subcontractor shall furnish all labor, material, equipment, supplies and services necessary to complete the work, scopes or tasks called for in the Work Order under the terms and conditions of the Owner/Contractor Contract Documents, this Master Agreement, the Subcontract (AIA A401-2017 Standard Form of Agreement Between Contractor and Subcontractor, attached hereto as **Exhibit A** and incorporated herewith by this reference as if fully set forth herein).

Issuance of one or more Work Orders to Subcontractor shall not create an obligation on the part of Contractor to award any additional Work Orders to Subcontractor. Issuance of a Work Order is neither implied nor guaranteed by this Master Agreement or **Exhibit A** attached hereto. There are no representations that any minimum amount of work will be subcontracted by Contractor to Subcontractor or that any funds or payments by Contractor to Subcontractor shall be made in the future.

All Work Orders awarded, and to be awarded, shall be subject to Contractor's evaluation of Subcontractor performance under this Master Agreement, **Exhibit A** attached hereto, and any Work Order.

A Work Order may be issued by Contractor to Subcontractor upon Contractor's request to Subcontractor for a proposal for separate Subcontractor tasks, any amendments thereto, Subcontractor's response to a Subcontractor RFP and amendments, and the Contractor award. The Subcontractor shall commence work under the Work Order on or before the date specified in each

individual Work Order or such earlier date as may be mutually agreed to be Contractor and Subcontractor.

### **Flow Down Provision**

All Subcontractor work and services shall be furnished and performed by Subcontractor in strict accordance and consistent with the Owner/Contractor Contract documents and requirements therein and also the terms and conditions of this Master Agreement, **Exhibit A** attached hereto, and any individual Work Order issued by Contractor to Subcontractor.

To the extent that the terms of the Owner Contract are applicable to the performance of the Work Order, and except as otherwise modified herein, Contractor assumes toward Subcontractor all the obligations, rights, duties, and remedies that the Owner assumes to Contractor and, in an identical way, Subcontractor assumes toward Contractor all the same obligations, rights, duties and remedies that Contractor assumes to the Owner.

The Work Order shall bind Subcontractor to Contractor in accordance with the terms and conditions therein. The integrated Work Order documents which include the Owner/Contractor Contract Documents, this Master Agreement, **Exhibit A** attached hereto, and all documents incorporated therein and, also the Work Order, are intended to be complimentary and interpreted in harmony so as to avoid conflict. In the event of any vagueness, conflict, inconsistency or omission in the integrated documents, the documents shall be construed and interpreted consistent with the intent of the parties hereto that the work and services undertaken by Subcontractor in the Work Order be furnished and performed as closely as possible to and under the same requirements placed upon Contractor by the Owner in the Owner/Contractor Contract Documents. The specific terms of this Master Agreement, **Exhibit A** attached hereto, and the Work Order take precedence over the other Owner/Contractor Contract Documents.

### **Work Order Documents**

A Work Order issued by Contractor to Subcontractor shall consist of Contractor's award to the Subcontractor, the Owner's Contract to Contractor (exclusive of Contractor's pricing), this Master Agreement, **Exhibit A** attached hereto, Contractor's Work Order to Subcontractor (together with all attachments thereto and documents incorporated by reference therein).

The Work Order shall specify the work, labor, materials, equipment, supplies, tasks, scopes or descriptions of the work and services awarded to Subcontractor; the price or pricing for the work or services; and any other special provisions not otherwise set forth in **Exhibit A** attached hereto.

### **Claims and Disputes**

In the event of any dispute, disagreement or claim arising from, out of or under, or in any way related to **Exhibit A**, and any separate Work Order, Contractor and Subcontractor shall follow the dispute resolution procedures contained in **Exhibit A**, except as otherwise provided below.

To the extent that any claim of Subcontractor constitutes a "pass-through claim" to the Owner, Subcontractor shall provide notice of such claim to Contractor and present such supporting documentation in sufficient time for Contractor to provide such notice and documentation to the Owner in accordance with all of the requirements of the Owner/Contractor Contract Documents and the controlling law under the Owner Contract. Failure of the Subcontractor so to do shall result in the waiver by Subcontractor of its claim.

Contractor shall not be compelled to pursue any pass-through claim of Subcontractor beyond presentation to the Owner as indicated above. However, Subcontractor shall be entitled to present and pursue such claim in the name of Contractor and shall be responsible for the payment of any and all costs and fees in connection therewith. Any such claim shall be subject to approval by Contractor before presentation.

In the event the pass-through claim is timely presented and documented, Subcontractor shall be entitled to recover from Contractor only and to the extent Contractor recovers from the Owner. Such recovery by Contractor is an express condition precedent to payment to Subcontractor. Any recovery by Subcontractor shall solely be limited to the recovery by Contractor against the Owner and any payment made by the Owner to Contractor as a result of Subcontractor's claim. The recovery obtained by Contractor against Owner, if any, shall be final and binding on the Subcontractor and Subcontractor shall be entitled to no further relief against Contractor.

In the event that Owner does not pay Contractor for Subcontractor's work for any reason which is not the fault of Subcontractor, Subcontractor shall allow Contractor time to exhaust all necessary remedies against Owner to collect this sum prior to any institution of any dispute resolution procedures by Subcontractor against Contractor. Subcontractor shall support Contractor in the pursuit of such remedies. In the event that Subcontractor shall institute dispute resolution procedures in order to preserve statutes of limitations, time limits for the filing of mechanic's liens or surety bond claims, Subcontractor agrees that such procedures and proceedings shall be stayed thereafter in order to allow Contractor to exhaust all remedies against the Owner. These stay requirements shall apply equally to Contractor's surety, if any.

### **Binding Effect**

This Master Agreement shall become binding upon Contractor and Subcontractor upon issuance of a signed Work Order. This Agreement may be discontinued for future application upon thirty (30) days written notice by either Contractor or Subcontractor. Notice of discontinuance shall not affect any prior written Work Order.

### **Identification of Master Agreement Documents**

This Master Agreement consists of the Agreement and:

- A. Owner/Contractor Contract and all Documents identified therein and incorporated by reference;

- B. Subcontract Agreement form attached hereto and incorporated herewith as **Exhibit A** and all documents identified therein and incorporated by reference;
- C. All Work Order(s) issued in the future together with all documents identified therein and incorporated by reference.

**Integration Clause**

This Master Agreement (together with all documents attached and incorporated by reference herein including **Exhibit A**) and the separate Work Orders to be issued (together with all documents attached and incorporated by reference therein) shall form the entire integrated agreement between Contractor and Subcontractor. All prior or contemporaneous agreements, oral or written, are merged herein and superseded hereby. No prior or contemporaneous oral or written representations, statements, discussions, or promises not contained herein shall bind Contractor and/or the Subcontractor.

**Electronic Signatures**

Contractor and Subcontractor agree that this Master Agreement, Work Orders and any amendments or changes thereto requiring signature of the parties hereto may be signed electronically, in lieu of wet ink, and that such signatures shall not be denied legal effect or enforceability solely because they are electronic in nature. Electronic signature means one communicated by electronic mail or in any electronic form, sound, symbol or process, attached to or logically associated with the Work Order or other record document and executed and adopted by a person with intent to sign the record.

CONTRACTOR:

STRAUB CONSTRUCTION COMPANY,  
INC.

By \_\_\_\_\_  
Name

Its \_\_\_\_\_  
Title

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

\_\_\_\_\_  
Subcontractor

By \_\_\_\_\_  
Name

Its \_\_\_\_\_  
Title

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