



Master Agreement for Building Condition Assessments

THIS AGREEMENT is made this _____ day of _____ 20____ (the "Effective Date") by and between the South Carolina Office of State Engineer, hereinafter called the "OSE", an instrumentality of the State of South Carolina, acting on behalf of any participating State Public Procurement Unit as defined by S.C. Code Ann. § 11-35-4610(6), hereinafter called "Public Unit", and,

a _____ duly licensed in the State of South Carolina, hereinafter called the "Consultant" or "Contractor."
and whose address is _____

and in association with the following Sub-Consultants:

Consultant and Public Unit may also be referred to in this Agreement collectively as the "Parties."

AGREEMENT

In consideration of the mutual covenants contained herein, the Parties agree as follows:

DEFINITIONS

Public Unit means a State Public Procurement Unit (as defined by S.C. Code Ann. § 11-35-4610(6), as amended) which has submitted a request for a Building Condition Assessment to Consultant. By submitting such request, a State Public Procurement Unit manifests its intent to be and is bound by this Agreement.

OSE means the Office of the State Engineer established by South Carolina Code Section 11-35-830, as amended, or its successor in interest. Pursuant to Section 11-35-4810, OSE is authorized to conduct and administer cooperative purchasing agreements on behalf of South Carolina State Public Procurement Units. Consistent with its statutory authority, OSE is acting solely in a representative capacity and on behalf of Public Units. OSE is not a party to this Agreement. Notwithstanding any other provision of this Agreement, OSE bears no liability for any party's losses arising out of or relating in any way to this Agreement.

Consultant means the entity offering Building Condition Assessments services.

Board Policy means the Budget and Control Board Policy for Obtaining Building Condition Assessments for State Building Acquisitions in effect on the Effective Date of this Agreement.

ARTICLE 1 – GENERAL

- A. This Agreement shall be in effect for one year from the Effective Date. On each anniversary of the Effective Date, this Agreement shall automatically renew for a term of one year unless OSE or Consultant sends the other written notice at least thirty days before the anniversary date that this Agreement shall not automatically renew. This Agreement shall terminate no later than three years after the Effective Date.

Master Agreement for Building Condition Assessments

- B.** As needed, Public Unit may request from the Consultant a Proposal for a Building Condition Assessment ("Proposal") for a specific building. The Consultant shall submit to the Public Unit a Proposal that delineates all services to be provided by Consultant. Upon written approval by the Public Unit, the Consultant shall perform the work delineated in its Proposal.
- C.** Consultant's Proposal shall be consistent with, and hereby incorporates by reference, both this Agreement and the Board Policy. To the extent of any inconsistency or conflict, the terms of this Agreement and the Board Policy take precedence over any terms in Consultant's Proposal. Consultant's Proposal shall contain a Reimbursables Schedule
- D.** All services provided by Consultant shall be performed in accordance with the applicable professional standards and building codes.
- E.** This Agreement shall commence upon the Effective Date and shall remain in effect through the duration specified herein unless otherwise modified pursuant to the terms of this Agreement.
- F.** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled. No minimum amount of work is guaranteed.

ARTICLE 2 – SCOPE OF WORK

- A.** The general scope of work shall include a Building Condition Assessment performed in accordance with Budget and Control Board Policy for Obtaining Building Condition Assessments for State Building Acquisitions stated in this Agreement.
- B.** The scope of work for a specific project shall be established in the approved Proposal from the Consultant for a Building Condition Assessment.

ARTICLE 3 – AUTHORIZATION OF SERVICES

- A.** At its option, at any time, the Public Unit may request a Proposal to perform a Building Condition Assessment as required for a specific project.
- B.** Within ten (10) business days of receiving a request, the Consultant shall submit the requested Proposal, including a Reimbursable Schedule, to provide the necessary professional services for the specific project to the Public Unit.
- C.** The Public Unit, upon receipt, will review the Proposal in a timely manner and accept or reject it, or request modification. Prior to approving the Proposal, the Public Unit reserves the right to negotiate with the Consultant to revise the scope of work and fees that are believed to be in the best interest of the State.
- D.** If the Proposal is accepted, the Public Unit will issue a Notice to Proceed to authorize the Consultant to proceed with the work.

ARTICLE 4 – DETERMINATION OF COSTS AND PAYMENT

- A.** Determination of Costs. Public Unit is relying on the expertise of Consultant in preparing the refined scope of work in order to assure that the assessment activities are defined and performed at a level necessary to fulfill requirements of the Public Unit.
 - A.1.** Consultant's costs may include reimbursement for lodging and meals which are related to requested assessments that are greater than 100 miles of travel from the Consultant's office or require overnight stay.
 - A.2.** Consultant's costs may include a management fee for overseeing the work of Sub-Consultants. The fee for such work shall not exceed 10% of the Sub-Consultant's fee for said services.
- B.** Payments. If requested by Consultant, the Public Unit agrees to pay the Consultant from time to time as the work progresses, but not more than once each month after the date of the Notice to Proceed, and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested.
 - B.1.** Payments on account of approved applications for payment shall be made within twenty-one (21) days of the Public Unit's receipt of the Consultant's invoice except that this requirement shall not apply to any amount: (a) for which the Consultant's invoice does not provide sufficient detail to demonstrate payment is due, (b) that the Public Unit disputes the amount due under the terms of the Agreement, or (c) reasonably withheld by the Public Unit to cover any default or failure to perform by the Consultant.
 - B.2.** The Public Unit shall provide written notice to the Consultant of any adjustment to or rejection of Consultant's invoice.

ARTICLE 5 – CHANGES IN THE SERVICES

- A. Any changes in the Building Condition Assessment Services to be performed under this Master Agreement shall be in the form of a written modification to this Agreement, mutually agreed to and signed by the duly authorized representative of OSE and the Consultant, specifying any such changes. Said modification must be signed by both OSE and Consultant.
- B. This Master Agreement does not authorize Public Unit to accept, or Consultant to provide, any work beyond the general scope of work authorized by this Master Agreement.

ARTICLE 6 – CONSULTANT'S DUTIES

- A. General.
 - A.1. The Consultant shall designate one or more representatives to be assigned for the duration of the Agreement. These representatives shall be authorized to act on behalf of the Consultant in all matters related to the Consultant's performance under this Agreement. The Consultant shall not replace a designated representative except for good cause shown.
 - A.2. The Consultant shall have, at the time of execution of this Agreement, all professional and business insurance, licenses, certifications and permits required to provide the required Services in the State of South Carolina and as required by this Agreement.
 - A.3. The Consultant shall have, at the time of acceptance of a Proposal, copies of all codes and standards applicable to the performance of the specific Building Condition Assessment services to be provided.
 - A.4. The Consultant shall be entitled to rely on the accuracy of information provided by the Public Unit. Such reliance requires that the Consultant shall review all information provided by the Public Unit and shall give prompt and timely notice to the Public Unit of deficiencies or inconsistencies in the information furnished by the Public Unit.
- B. Building Condition Assessments.
 - B.1. All assessments shall be in conformance with the Budget and Control Board Policy for Obtaining Building Condition Assessments for State Building Acquisitions.
 - B.2. All assessments shall be done in accordance with the current building codes adopted by the Office of State Engineer.

ARTICLE 7 – SUB-CONSULTANTS

- A. Required Approval.
 - A.1. Sub-consultants listed as a part of this Master Agreement shall be used for this work and not replaced during the course of this Agreement except with the advance written approval of the Public Unit after complying with the following criteria:
 - A.1.1. The Consultant has established in writing that the change is in the best interest of the State of South Carolina.
 - A.1.2. The Consultant has established an appropriate reason for the change which may include, but is not limited to, the following reasons: the original Sub-Consultant has failed to perform, the original Sub-Consultant is not qualified or capable of performing, and/or the original Sub-Consultant has requested in writing to be released.
 - A.1.3. The circumstances related to the request do not indicate any bad faith in the original inclusion of the Sub-Consultant.
 - A.1.4. The Consultant shall not contract with a proposed person or entity to which the Public Unit or the OSE has made a reasonable and timely objection. The Consultant shall not be required to contract with anyone to whom the Consultant has made reasonable objection.
 - A.1.5. The change in Sub-Consultants shall be evidenced by a modification to this Agreement.
- B. Sub-Consultant Relations.
 - B.1. By appropriate enforceable agreement, the Consultant shall require each Sub-Consultant to be bound to the Consultant by the terms of this Agreement, and to assume toward the Consultant all the obligations and responsibilities which the Consultant, by this Agreement, assumes towards the Public Unit and the OSE.
 - B.2. Each Sub-Consultant agreement shall preserve and protect the rights of the Public Unit under this Master Agreement with respect to the work to be performed by the Sub-Consultant so that subconsulting thereof will not prejudice such rights. Where appropriate, the Consultant shall require each Sub-consultant to enter into similar agreements with Sub-subconsultants.

ARTICLE 8 – COMMUNICATION AND DOCUMENTATION

- A. Communications. Consultant shall promptly communicate to the Public Unit. Consultant shall not be entitled to rely upon any representation, statement or conduct of any person or entity, except as provided in this Agreement.
- B. Documentation in General. Consultant shall prepare written reports as required in the Budget and Control Board Policy for Obtaining Building Condition Assessments for State Building Acquisitions. Consultant shall take photographs of any assessment where such photograph assists in the understanding of the condition of the site or facility being assessed.

ARTICLE 9 – CONTRACTOR'S LIABILITY INSURANCE :

- A. **GENERAL INSURANCE.** The Consultant shall maintain all forms of insurance required by law in the State of South Carolina. The Consultant shall also maintain insurance coverage for COMMERCIAL general liability, automobile liability, and workers' compensation by a carrier satisfactory to the Public Unit, which carrier shall be licensed to provide such coverage in the State of South Carolina, in the forms and amounts listed below. The Consultant shall ensure that all Sub-consultants to be engaged or employed by the Consultant carry and maintain similar insurance. The Consultant and his Sub-consultants shall submit proof of such insurance to the Public Unit at time of Contract Award and at any time when a material change in coverage, carriers, or underwriters occurs. The maintenance in full current force and effect of such coverage shall be a condition precedent to the Public Unit's obligation to pay under this Agreement. The insurance policies shall incorporate a provision requiring written notice to the Public Unit at least thirty (30) days prior to any cancellation, non renewal, or material modification of the policies.

COMMERCIAL GENERAL LIABILITY:	\$ 1,000,000
(a) General Aggregate (per project).....	\$ 1,000,000
(b) Personal and Advertising Injury.....	\$ 1,000,000
(d) Each Occurrence.....	\$ 1,000,000
(e) Medical Expenses (Any one Person).....	\$ 5,000
BUSINESS AUTO LIABILITY (including All Owned, non -Owned, and Hired Vehicles):	
(a) Combined Single Limit	\$ 1,500,000
OR	
(b) Bodily Injury & Property Damage (each)	\$ 750,000
WORKERS COMPENSATION	
(a) State.....	Statutory
(b) Employer's Liability	\$100,000 Per Accident

\$500,000 Disease, Policy Limit
\$100,000 Disease, Each employee

- B. **PROFESSIONAL LIABILITY INSURANCE.** In addition to other insurance required by statute under provisions of this Agreement, the Consultant and each Sub-Consultant shall provide professional liability insurance, issued by an insurance carrier approved in advance by the Public Unit and licensed to provide such coverage in the State of South Carolina, to compensate the Public Unit for all negligent acts, errors and omissions by the Consultant, his firm, his agents, his employees, and his Sub-consultants arising out of this Agreement. The Consultant and his Sub-Consultants shall submit proof of such insurance, which shall provide a coverage amount not less than five hundred thousand dollars (\$500,000) per claim. At the discretion of the Public Unit, higher amounts may be required.

ARTICLE 10 – TERMINATION

- A. Termination by Public Unit. A Public Unity may terminate an individual proposal in whole or in part, for the convenience of the Public Unit. Upon termination of an individual proposal, the Consultant shall deliver all work performed to the respective Public Unit. In the event of termination, the Consultant shall be compensated for services properly performed up to date of the notice of termination.

Master Agreement for Building Condition Assessments

- B.** Termination by OSE. This Agreement may be terminated for convenience by the OSE at any time, whenever the OSE shall determine that such termination is in the best interest of the State of South Carolina. Any such termination shall be effected by delivery to Consultant of a written notice of termination specifying the date upon which such termination becomes effective. Unless the termination so provides, a termination under this paragraph shall not operate to terminate an individual proposal if a notice to proceed has been issued for that proposal prior to the effective date of termination. The Consultant acknowledges that in the event of a termination, its total remedy and monetary recovery is limited to full payment by the respective Public Unit for all work acceptably performed, plus reimbursables, under this Agreement up to the date of termination. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the respective Public Unit.

ARTICLE 11 – CLAIMS AND DISPUTES

- A.** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.
- B.** Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.
- C.** Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

ARTICLE 12 – MISCELLANEOUS PROVISIONS

- A.** Safety. The Consultant shall ensure that all employees and Sub-Consultants are aware of and comply with safety requirements before arriving on site.
- B.** Ownership of Work Product. All work product, which includes, but is not limited to all manuals, forms, contracts, schedules, reports, documentation, photographs, data, electronic data, comments and any and all documents supplied to or produced by Consultant under this Agreement are the property of the respective Public Unit. Said work product and the information contained therein are the exclusive property of the respective Public Unit and are not to be used by Consultant on any other projects with any other parties except by the advance written agreement of the Public Unit. Consultant agrees to maintain the level of confidentiality, to the extent permitted by law, needed to protect the State's interest in the project.
- C.** Legal Relationship. The Public Unit shall identify the desired performance outcome and the Consultant shall determine the manner and method of achieving that outcome consistent with professional and customary practices. Nothing in this section is intended to limit or reduce any governmental immunities to the extent any may be available to Consultant by reason of its performance of assessments on behalf of the State of South Carolina.
- D.** Relationship of The Parties: Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.
- E.** Relationship of Using Governmental Units: Each Public Units obligations and liabilities are independent of every other Public Unit's obligations and liabilities. No Public Unit shall be responsible for any other Public Unit's act or failure to act.
- F.** Assignment: No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.

Master Agreement for Building Condition Assessments

- G.** Hold Harmless Requirement. To the fullest extent permitted by law, the Consultant hereby agrees to indemnify and save harmless the State of South Carolina, the Office of State Engineer, their officers, agents and employees from and against any and all claims arising from intentional or negligent acts, errors or omissions of the Consultant and its Sub-Consultants in the performance of any work under this Agreement.
- H.** Third Party Beneficiary: This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.
- I.** Nothing in this Agreement shall prevent the Consultant from employing any independent consultant, associate, or sub-contractor to assist in the execution of the work.
- J.** Records of the Consultant's personnel, consultants, and reimbursable expenses pertaining to the project shall be kept on a generally recognized account basis and shall be available to the OSE or their authorized representative at mutually agreeable times.
- K.** Non-Indemnification: Any term or condition is void to the extent it requires the State to indemnify anyone.
- L.** Waiver: The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, by their duly authorized agents.

CONSULTANT. I represent to the OSE and Public Units that I have full legal authority to enter into this Agreement and that the execution of this Agreement is authorized by Consultant.

Signature of Consultant

<i>Print or Type Name</i>	<i>Title</i>
---------------------------	--------------

OFFICE OF STATE ENGINEER, an instrumentality of the State of South Carolina, acting on behalf of participating Public Units. I personally represent that I have been duly appointed by the Office of State Engineer and am authorized to execute this Agreement.

OSE Signature

<i>Print or Type Name</i>	<i>Title</i>
---------------------------	--------------

End of Document