DRAFT AGREEMENT
BETWEEN OWNER AND CONTRACTOR

MD ANDERSON AGREEMENT NO.: 506- __-_____

This Agreement made the _____ day of _____ in the year _____, by and between _____, hereinafter called the Contractor, and The University of Texas M. D. Anderson Cancer Center, hereinafter called the Owner,

WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK: The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project entitled BASTROP ANIMAL AREA FLOOR UPGRADES (Project No. 09-0070). These drawings and specifications were prepared for the Owner by Research and Education Facilities Management, Design and Construction, The University of Texas – MD Anderson Cancer Center, acting as and in these Contract Documents entitled the Project Architect. The Contractor shall do everything required by this Agreement, the Uniform General and Supplementary General Conditions for University of Texas System Building Construction Contracts, the Special Conditions, the Addenda, the Specifications, the Drawings, the Historically Underutilized Business (HUB) Subcontracting Plan, and the Pricing and Delivery Proposal attached as **Exhibit B** (including any unit prices stated therein).

The Specifications and Drawings are enumerated as follows:

SPECIFICATIONS: See Project Manual: Bastrop Animal Area Floor Upgrades dated 3/14/13.

DRAWINGS: Available for purchase at ARC, 615 S. Lamar**,** Austin, TX. 78704**,** Phone: 512-441-2475.

ADDENDA: See Project Manual Bastrop Animal Area Floor Upgrades dated 3/14/13. and RFP documents.

ALTERNATES: NOT USED

ARTICLE 2. TIME OF COMPLETION: The Owner shall provide a signed Notice to Proceed in which a date for commencement of the work shall be stated; such commencement date shall be 10 or more days after the date of the notice. The Contractor may not commence work prior to the date for commencement set forth in the Notice to Proceed. The Contractor shall achieve substantial completion of the work within one hundred twenty (120) calendar days after such commencement date; as such completion date may be extended by

approved Change Orders. The time set forth for completion of the work is an essential element of the Contract.

ARTICLE 3. THE CONTRACT SUM: The Owner shall pay the Contractor for performance of the Contract, subject to additions and deductions provided therein, the sum of _____ ($_____), and make payment on account as hereinafter provided.

ARTICLE 4. HUB SUBCONTRACTING PLAN: The Owner has adopted **Exhibit H**, Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. Contractor, as a provision of the Agreement must comply with the requirements of the Policy and adhere to the HUB Subcontracting Plan submitted with Contractor's Proposal and attached as **Exhibit I**. No changes to the HUB Subcontracting Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

ARTICLE 5. NOT USED

ARTICLE 6. CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK:

The 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.

The Contractor shall insure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

All materials used on this_Project shall be certified as non-Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:

Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;

Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

The 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 to the Texas Department of Health licensed inspector or Project Architect or Engineer who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

At Final Completion the Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

ARTICLE 7. ACCEPTANCE OF BID OR AWARD OF CONTRACT: By signing this Agreement, the undersigned certifies as follows:

Assignment. This Agreement is a personal service contract for the services of Construction, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Eligibility Certification. Pursuant to Section 2155.004, Texas Government Code, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

Franchise Tax Certification. A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

Waivers. No delay or omission by either party in exercising any right or power arising from noncompliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

Records. Records of Contractor’s costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the 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.

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:

Dwain Morris
Vice President and Chief Financial Officer
1515 Holcombe Blvd., Unit 1495
Houston, TX 77030

With Copies to:

William E. Bailey, JD, CPA
Executive Director, Facilities Finance
1515 Holcombe Boulevard
Fannin Holcombe Building - Unit 717
Houston, Texas 77030-4009

If to Contractor:

_____
_____
_____
_____
_____
_____

Invoices. All invoices shall be sent to the following:

MD Anderson Cancer Center
Accounts Payable – Box 199
PO Box 301401
Houston, TX 77230-1401
E-mail address: mdaccap@mdanderson.org

Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

By signature hereon, Contractor certifies that no member of the Board of Regents of The University of Texas System, the Owner, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

EXHIBITS TO THIS AGREEMENT

The documents below are attached to and fully incorporated into this Agreement as substantive parts of this Agreement.

Exhibit A – Rider 1 to the Agreement

Exhibit B – Respondent's Pricing and Delivery Proposal

Exhibit C – Execution of Offer

Exhibit D – Rider 105; Vendor Affirmation

Exhibit E – Rider 106; Premises Rules

Exhibit F – Rider 107; Travel Policy

Exhibit G – Rider 116; Invoice Payments

Exhibit H – Policy on Utilization Historically Underutilized Businesses

Exhibit I – Approved HUB Plan

Exhibit J - Rider 117; Institutional Policies

Exhibit K- 2010 Uniform General and Supplemental General Conditions

BY SIGNING BELOW, the Contractor has executed and bound itself to this Agreement as of the day and year first above written. The Agreement shall become effective only upon the execution of the Agreement by both parties. Change orders, additional services, amendments, modifications, deletions or other changes to the Agreement, if any, shall become effective upon the issuance of a signed Notice to Proceed by Owner to the Contractor. Subsequent to the issuance of a signed Notice to Proceed, Owner will issue a Purchase Order Revision reflecting the changes in scope, additional services, amendments, modifications, deletions or other changes to the Agreement. Contractor must receive the Purchase Order revision prior to Contractor submitting invoice for payment for the associated Agreement change.

(SEAL) **[Contractor's Name]**

ATTEST:

By: _____
(original signature)

_____
(name and title)

By: _____
(original signature)

_____
(name and title)

Date: _____

CONTENT APPROVED:

THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER
(Owner)

Office of Vice President
Operations & Facilities Management

By: _____
(original signature)

Name: Spencer Moore
Title: Vice President for Operations and Facilities Management

Date: _____

By: _____
(original signature)

Name: _____
Title: _____

Date: _____

PERFORMANCE BOND

Surety Bond No. _____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____§

That we, _____, as Principal, and _____ _____ as Surety, are hereby held and firmly bound unto the State of Texas as Oblige in the penal sum of _____ ($_____) for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the Principal entered into a certain contract, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Board of Regents of The University of Texas System for and on behalf of _____, _____, dated _____, _____, for _____ (Project No. _____).

NOW THEREFORE, the condition of this obligation is such that, if the Principal shall faithfully perform the said Contract in accordance with the Plans and Specifications and Contract Documents, and shall fully indemnify and save harmless the State of Texas from all cost and damage which the State of Texas may suffer by reason of Principal's default or failure so to do and shall fully reimburse and repay the State of Texas all outlay and expense which the State of Texas may incur in making good any such default, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

In the event that the Principal is declared in default under the said Contract, the Surety will within Fifteen (15) days of the State of Texas' declaration of such default take over and assume completion of said contract and become entitled to the payment of the balance of the Contract Price. Conditioned upon the Surety's faithful performance of its obligations, the liability of the Surety for the Principal's default shall not exceed the penalty of this bond.

The Surety agrees to pay to the State of Texas upon demand all loss and expense, including attorney's fees, incurred by the State of Texas by reason of or on account of any breach of this obligation by the Surety.

This bond is issued pursuant to the requirements of Section 2253.021, Texas Government Code, as amended.

Provided further, that if any legal action be filed upon this bond, venue shall lie in the

county where the said Contract is to be performed.
Provided further, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the said Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the said Contract or to the work or to the Specifications.

By signature hereon, if the amount of this bond exceeds $100,000, then the Surety attests that at the time the bond was executed (and Surety shall provide the Oblige with evidence of the following):

(1) it was a holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or

(2) had reinsured any liability in excess of $100,000 by a reinsurer holding a certificate of authority from the United States Secretary of the Treasury.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this _____ day of _____ in the year_____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

_____
Principal

ATTEST:

By: _____

By:_____

_____
(Typed Name and Title)

_____
(Typed Name and Title)

(SEAL)

_____
Surety

ATTEST:

By: _____

By: _____

_____
(Typed Name and Title)

_____
(Typed Name and Title)

Surety's Texas Local Recording Agent or Resident Agent:

_____
(Signature)

_____
(Typed Name)

License No. _____

File No. _____

Address: _____

_____

Telephone No.: _____

Surety's Home Office Agent or Servicing Agent:

Name: _____

Title: _____

Address: _____

_____

Telephone No.: _____

PAYMENT BOND

Surety Bond No. _____

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF_____ §

That we, _____, as Principal, and , as Surety, are hereby held and firmly bound unto the State of Texas as Oblige in the penal sum of _____ ($_____) for the payment whereof, the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the Principal entered into a certain contract, hereto attached, and made a part hereof, with the State of Texas, acting by and through the Board of Regents of The University of Texas System for and on behalf of _____ _____, _____, dated _____, _____, for _____ (Project No. _____).

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall promptly make payments to all claimants as defined in Section 2253.021, Texas Government Code, as amended, of all persons supplying labor and materials in the prosecution of the work provided for in said contract, then this obligation shall be null and void, but otherwise it shall remain in full force and effect.

In the event that the Principal fails to promptly pay when due persons who have supplied labor, materials, or supplies used in the performance of the said contract, the Surety will, upon receipt of notice from the State of Texas or a claim in the form required by law, satisfy all undisputed balances due, and make arrangements satisfactory to the interested parties to resolve all amounts disputed in good faith, but in no event shall the liability of the Surety for the Principal's failure to promptly pay for labor, materials, or supplies exceed the penalty of this bond.

This Surety agrees to pay the State of Texas upon demand all loss and expense, including attorney's fees, incurred by the State of Texas by reason or on account of any breach of this obligation by Surety.

Provided further, that this bond is made and entered into for the protection of all claimants supplying labor and material in the prosecution of the work provided for in said Contract, and all such claimants shall have a direct right of action under the bond as provided in Section 2253.021, Texas Government Code, as amended. If any legal action is filed upon this bond, venue shall be in the county where the said Contract is to be performed.

By signature hereon, if the amount of this bond exceeds $100,000, then the Surety attests that at the time the bond was executed (and Surety shall provide the oblige with evidence of the following):

(1) it was a holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or

(2) had reinsured any liability in excess of $100,000 by a reinsurer holding a certificate of authority from the United States Secretary of the Treasury.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this _____ day of _____ in the year_____, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(SEAL)

_____
Principal

ATTEST:

By: _____

By:_____

_____
(Typed Name and Title)

_____
(Typed Name and Title)

(SEAL)

_____
Surety

ATTEST:

By: _____

By: _____

_____
(Typed Name and Title)

_____
(Typed Name and Title)

Surety's Texas Local Recording Agent or Resident Agent:

_____
(Signature)

_____
(Typed Name)

License No. _____

File No. _____

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Name: _____

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_____

Telephone No.: _____