

DRAFT

The Owner: The University of Texas MD Anderson Cancer Center

Texas Tax Account No.:

Agreement Number:

This Master Agreement is for the provision of specified construction contracting services associated with Owner's Job Order Contracting Program. Said services are to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Master Agreement. Contractor represents that it has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Master Agreement. Contractor agrees to provide such services on a per-project (Job Order Project) basis as requested by the Owner in accordance with the terms of this Master Agreement. The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications associated with any Job Order Project pursuant to Owner's Job Order Contracting program.

Issued by the UT System Office of General Counsel August 2015

ARTICLE 1 TERM OF AGREEMENT

1.01 **Initial Term:** The initial term of this Agreement shall begin on the Effective Date and shall expire _____ years after that date unless renewed or terminated in accordance with the terms of the Agreement.

1.02 **Renewal Option:** The Owner has the option to renew the term of this Agreement for _____ successive _____ year periods upon written notice to the Contractor at least sixty (60) days prior to the expiration of the initial or any subsequent term.

1.03 **Completion of Work in Progress:** The Owner has the option to extend the term of this Agreement, or any renewal period, as necessary for Contractor to complete work on any Job Order approved by the Owner prior to the expiration of the Agreement.

ARTICLE 2 AUTHORIZED CONTRACT SUM

2.01 **Contract Sum:** The overall maximum value of this Agreement is indefinite, subject to the contractual authority delegated by the UT System Board of Regents to the Owner's representative. The cost of each specifically authorized Job Order will be established in a "Notice to Proceed" issued by the Owner. Established cost amounts shall not be increased except by written change order to a previously issued Notice to Proceed executed by the Owner and the Contractor.

2.02 **No Minimum Amount of Work:** It is expressly understood that the Owner is under no obligation to request any services from Contractor and no minimum amount of work is required under this Agreement. All service requests will be made by the Owner on an as-needed basis, subject to future agreement on the scope of the work and its cost.

ARTICLE 3 SCOPE OF WORK—SPECIFIC JOB ORDER PROJECTS

3.01 **In General:** The Contractor agrees to provide general and specific construction services on a per-project ("Job Order") basis as requested by the Owner in accordance with the terms of this Agreement. The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications associated with any Job Order. When the services of an architect or engineer ("A/E") are required for a Job Order, the A/E for the Job Order shall be as specified in the individual Job Order RFP. The Contractor shall do everything required by this Agreement, Owner's Special Conditions, the addenda, the specifications and drawings for each Job Order and any other requirements incorporated into this Agreement or a specific Job Order by reference.

3.02 **Job Order Scope:** The specific scope of work for each Job Order shall be determined in advance and in writing between the Owner and the Contractor.

3.03 **Job Order RFP:** The Owner shall prepare a Job Order Request for Proposal ("Job Order RFP") identifying the Job Order and describing in drawings, specification and other appropriate materials ("Job Order Documents") the intended scope and character of the work to be completed under the Job Order and the schedule for completing the Job Order.

3.04 **Job Order Proposal:** In response to a Job Order RFP, the Contractor shall provide Owner with a written Job Order Proposal. The Job Order Proposal shall include the following:

- a. A narrative description of Contractor's understanding of the Job Order scope of work;
- b. A description of particular phases of the scope of the work, if applicable;
- c. A Job Order Cost Proposal (prepared in accordance with Article 13, below) detailing:
 1. the cost of the 'pre-priced' items as taken from the unit price guide;
 2. the cost of any 'non-pre-priced' items;

- 3. a statement that all Contractor fees, overhead expenses and general conditions are included in the Job Order Cost Proposal; and
- 4. a lump sum figure for performing the work ("Job Order Sum");
- d. A proposed date to commence the work;
- e. A list of all subcontractors that Contractor proposes to use in the performance of the work;
- f. Any qualifications or conditions applicable to the Job Order Proposal; and
- g. A summary statement of the amount of all previous Job Orders entered into under this Agreement to date.

3.05 **Job Order Proposal Review:** The Owner and the Contractor shall review Contractor's Job Order Proposal and negotiate any changes, clarifications or modifications as required. The Contractor shall submit a revised Job Order Proposal incorporating any changes, clarifications or modifications made in the review process. The Owner may accept, reject or seek modification of any Job Order Proposal.

3.06 **Notice to Proceed:** Upon approval of a specific Job Order Proposal by the Owner, the Owner shall issue a written Notice to Proceed. The Notice to Proceed authorizes the Contractor to begin the work identified in the accepted Job Order Proposal (the "Work") on the date specified in the Notice to Proceed. The Contractor shall complete the Work within the number of days specified in the Job Order Proposal accepted by the Owner, subject to extensions of time approved by the Owner through Change Order. The time set forth for completion of the Work for each Job Order is an essential element of the Job Order. The Notice to Proceed shall include a Purchase Order number specific to the Job Order.

ARTICLE 4 ENVIRONMENTAL REGULATIONS, WAGE RATES AND OTHER LAWS GOVERNING CONSTRUCTION

4.01 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of this Agreement relating to the environment and its protection at all times. Unless otherwise specifically determined, Owner is responsible for obtaining and maintaining permits related to storm water run-off. Contractor shall conduct operations consistent with storm water run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.

4.02 Wage Rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the Owner's Special Conditions . The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in this Agreement.

4.02.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Job Order Site and shall notify each worker, in writing, of the following as they commence work on the Job Order: the worker's job classification, the established minimum wage rate requirement for that classification, as well as the worker's actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the worker and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.

4.02.1.1 Contractor shall submit a copy of each worker's wage-rate notification to the Owner with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Job Order.

4.02.1.2 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Chapter 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on Owner's prevailing wage schedule will

be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform the Owner of the proposed wage to be paid for the skill along with a justification for same and the Owner shall promptly concur with or reject the proposed wage and classification. Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.

4.02.3 Complaints of Violations. All complaints of violations of wage rate requirements and any fines for violations will be handled in accordance with Gov't Code Chapter 2258.

4.02.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.

4.03 Venue for Suits. The venue for any suit arising from the Agreement will be in a court of competent jurisdiction in Harris County, Texas, or as may otherwise be designated in the Owner's Special Conditions.

4.04 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work.

4.05 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Job Order Documents, or where the copyright violations are contained in drawings, specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.

4.06 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.

ARTICLE 5 CONTRACTOR'S GENERAL RESPONSIBILITIES

5.01 **Job Order Manager:** The Contractor shall manage the Work on any Job Order authorized pursuant to this Agreement. The Contractor shall provide all labor and material necessary and reasonably inferable for the complete performance of any Work authorized pursuant to this Agreement.

5.02 **Standard of Care:** Contractor agrees to use its best efforts, skill, judgment, and abilities to perform the Work in an expeditious and timely manner as is consistent with the orderly progress of any Job Order authorized pursuant to this Agreement. Contractor shall at all times provide a sufficient number of qualified personnel to accomplish the Work within the time limits set forth in the schedule.

5.03 **Compliance with Laws:** Contractor shall endeavor to perform the Work in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

5.04 **Existing Conditions:** Contractor shall use reasonable efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Contractor by Owner, or any other party, that Contractor uses for the Job Order.

5.05 **Correction of Work:** Contractor shall promptly correct any known or discovered error, omission, or other defect in the Work without any additional cost or expense to Owner.

5.06 **Phasing:** The Contractor shall not proceed beyond any previously authorized phase of the Work for a Job Order unless authorized by the Owner in writing, except at the Contractor's own financial risk. Applicable phases of the scope of Work shall be identified in the Job Order Proposal.

5.07 **Representative:** Contractor shall designate a representative primarily responsible for the Work under this Agreement. The designated representative shall act on behalf of Contractor with respect to all phases of the Work and shall be available as required for the benefit of any Job Order and the Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

5.08 **Documentation:** The Contractor shall fully document its Job Order activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Job Order Proposal. The Contractor shall bear the cost of providing all plans, specifications and other documents used by the Contractor and its subcontractors.

5.09 **Job Order Cost Estimating:** The Contractor will obtain and use, at the Contractor's expense, for automation and estimation standardization purposes, the estimating software called, Means Cost Works.

ARTICLE 6 THE OWNER'S RESPONSIBILITIES

6.01 **Job Order RFP:** The Owner shall provide a Job Order RFP setting forth the Owner's description of the Job Order scope in drawings, specifications and other appropriate documents, schedule, objectives, characteristics and constraints, and a description of the services to be provided by the Contractor for the Job Order.

6.02 **Representative:** The Owner designates _____ as its representative authorized to act in the Owner's behalf with respect to the Project. Contractor shall coordinate its work solely through the designated representative. The Owner designates _____ or his designee as its representative for the purpose of administering this Agreement and as its representative in any dispute resolution procedures.

6.03 **Special Information:** The Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to the Job Order. Owner shall furnish other special investigations of the Job Order site as requested by the Contractor and as reasonably necessary for the Job Order. Contractor shall exercise reasonable care in relying upon this information in the performance of its services under this Agreement. Owner makes no warranties or representations as to the accuracy or suitability of information provided to the Contractor by the Owner or by others.

6.04 **Entry on Land:** The Owner shall assist Contractor in gaining entry to state owned or controlled property as necessary for Contractor to perform its services under this Agreement.

6.05 **Administrative Services:** The Owner shall furnish all legal, accounting, auditing and insurance counseling services that it requires for any Job Order and for administering this Agreement.

6.06 **Review of Work:** The Owner will review the Work in progress as appropriate. The Owner will notify the Contractor in writing of any material error or omission or other defect in the Work or any conflict in the Job Order documents that the Owner becomes aware of, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

6.07 **Time for Response:** The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Contractor's services and of the Work.

ARTICLE 7

INSURANCE

7.01 **Insurance Requirements.** Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of this Agreement. The required insurance shall include coverage for Owner's property prior to construction, during construction and during the warranty period. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions.

7.02 **Coverage** shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A-, VII or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

7.03 Insurance Coverage Required.

7.03.1 **Workers' Compensation.** Insurance with limits as required by the Texas Workers' Compensation Act and Employer's Liability Insurance with limits of not less than:

\$1,000,000 each accident;

\$1,000,000 disease each employee; and

\$1,000,000 disease policy limit.

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of Owner.

7.04 **Commercial General Liability Insurance**, including premises, operations, independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, fully insuring Contractor's (or Subcontractor's) liability for bodily injury (including death) and property damage with a minimum limit of:

\$1,000,000 per occurrence;

\$2,000,000 general aggregate;

\$2,000,000 products and completed operations aggregate; and

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Job Order) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

7.05 **Asbestos Abatement Liability Insurance**, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. *This requirement applies if the Work or the Job Order includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Agreement, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer's liability limits for asbestos abatement will be:

\$1,000,000 each accident;

\$1,000,000 disease each employee; and

\$1,000,000 disease policy limit.

7.06 **Business Automobile Liability Insurance**, covering all owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

Contractor or any subcontractor responsible for transporting asbestos or other hazardous materials defined as asbestos shall provide pollution coverage for any vehicle hauling asbestos containing cargo. The policy must include a MCS 90 endorsement with a \$5,000,000 limit and the CA 9948 Pollution Endorsement, or its equivalent.

7.07 **All-Risk Builder's Risk Insurance (Or All-Risk Installation Floater (for instances in which the Job Order involves solely the installation of material and/or equipment))**. The Job Order RFP will identify any Job Orders for which Contractor will be required to provide Builder's Risk insurance (or All-Risk Installation Floater). For each Job Order for which Contractor is required to provide Builder's Risk Insurance (All-Risk Equipment Floater):

7.07.1 Contractor shall purchase and maintain in force builders risk insurance on the entire Work. Such insurance shall be written in the amount of the original Job Order Sum, plus any subsequent change orders and plus the cost of materials supplied or installed by others, comprising Total Value for the entire Job Order at the site. The insurance shall apply on a replacement cost basis with no coinsurance provision. A sublimit may be applicable to flood coverage, but sublimit must be at least 20% of the Total Value of the Job Order. The limit for all other perils, including Named Windstorm, Wind, and Hail, must be equal to the Total Value for the entire Job Order at the site. (If Installation Floater, limit shall be equal to 100 percent of the Job Order Sum.)

7.07.2 This insurance shall name as insureds the Owner, the Contractor, and all subcontractors and sub-subcontractors in the Work.

7.07.3 Builders risk insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against fire and extended coverage perils, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, boiler and machinery/mechanical breakdown, testing and startup, and terrorism.

7.07.4 This insurance shall cover the entire work at the site as required, including, but not limited to, the following:

- Temporary works including but not limited to scaffolding, form work, fences, shoring, hoarding, falsework and temporary buildings
- Offsite Storage
- Portions of the work in transit
- Debris removal
- Extra Expense
- Expediting Expenses
- Demolition and Increased Cost of Construction
- Pollutant Clean-Up and Removal

- Trees, Shrubs, Plants, Lawns and Landscaping (if applicable)
- Errors & Omissions (applicable to purchase of Builder's Risk policy only)

7.07.5 This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.

7.07.6 This insurance shall be specific as to coverage and shall be primary to any permanent insurance or self-insurance that may be maintained on the property by Owner.

7.07.7 This insurance shall include a waiver of subrogation in favor of Owner, the Contractor, and all subcontractors and sub-subcontractors in the work.

7.07.8 As applicable, Flood deductible shall not exceed \$250,000 for Zone A, \$100,000 for Zone B and \$50,000 for all other Zones. For Tier 1 and Tier 2, Named Windstorm deductible shall not exceed 2% of the Job Order values in place at the time of the loss.

7.07.9 Before the commencement of the Work, Contractor shall provide to Owner an accurate certificate of insurance that provides specific evidence of all requirements for Builder's Risk Insurance. A copy of the policy itself shall be provided to Owner within 30 days after Owner's written request.

7.07.10 Refer to Owner's Special Conditions for possible additional Builders Risk insurance requirements.

ARTICLE 8. CONSTRUCTION DOCUMENTS, COORDINATION DOCUMENTS, AND RECORD DOCUMENTS

8.01 Drawings and Specifications.

8.01.1 Copies Furnished. Contractor will be provided with the number of complete sets of the Drawings, Specifications, and addenda as provided in the Agreement or the Owner's Special Conditions. Additional sets of Drawings and Specifications, if requested, will be furnished at reproduction cost.

8.01.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.

8.01.3 Interrelation of Documents. The Job Order Documents as referenced in the Contract between Owner and Contractor are complementary, and what is required by one shall be as binding as if required by all.

8.01.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Job Order Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Agreement; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials and installation); and (e) other Job Order Documents. Among other categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Contractor shall notify A/E and Owner for resolution of the issue prior to executing the Work in question.

8.1.5 Contractor's Duty to Review Job Order Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Job Order Documents, prior to commencing the Work, Contractor shall examine and compare the Job Order Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.

Owner does not warrant or make any representations as to the accuracy, suitability or completeness of any information furnished to Contractor by Owner or its representatives.

8.02 Requirements for Record Documents. Contractor shall:

8.02.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Job Order correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.

8.02.2 Maintain the Record Documents which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available the Record Documents and all records prescribed herein for reference and examination by Owner and its representatives and agents.

8.02.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.

8.02.4 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Job Order Documents due to coordination and actual field conditions, including RFIs.

8.02.5 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Job Order Documents generated by A/E or Owner.

ARTICLE 9. CONSTRUCTION SAFETY

9.01 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Job Order and submit it to Owner and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.

9.02 Injuries. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify Owner and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.

9.03 Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify Owner immediately.

9.04 Trenching Plan. When the Job Order requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to Owner prior to commencing trenching operations unless an engineered plan is part of the Job Order Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this Job Order.

ARTICLE 10. QUALITY CONTROL

10.01 Materials & Workmanship. Contractor shall execute Work in a good and workmanlike manner in accordance with the Job Order Documents. Contractor shall develop and provide a quality control plan specific to the Job Order and acceptable to Owner. Where Job Order Documents do not specify quality standards, Contractor shall complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, Contractor shall incorporate all new materials and equipment into the Work under the Job Order.

10.02 Testing.

10.02.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements.

10.02.2 Contractor shall provide testing of basic material or fabricated equipment included as part of a submittal for a required item; basic material or fabricated equipment offered as a substitute for a specified item; preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Job Order Documents; and all subsequent tests on original or replaced materials conducted as a result of prior testing failure.

10.02.3 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to Owner, A/E, and Contractor.

10.02.7 Covering Up Work. If Contractor covers up any work without providing Owner an opportunity to inspect, Contractor shall, if requested by Owner, uncover and recover the work at Contractor's expense.

10.03 Submittals.

10.03.1 Contractor's Submittals. Contractor shall submit with reasonable promptness consistent with the Job Order schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Job Order Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Job Order Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp of approval will be returned without review or comment. Any delay resulting from Contractor's failure to certify approval of the Submittal is Contractor's responsibility.

10.03.2 Review of Submittals. A/E and Owner review is only for conformance with the design concept and the information provided in the Job Order Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and Owner of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.

10.03.5 No Substitutions Without Approval. Owner and A/E may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, Owner and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly.

10.03.6 Unauthorized Substitutions at Contractor's Risk. Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials,

equipment or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or Job Order administration costs resulting from such unauthorized substitutions.

10.04 Inspection during Construction.

10.04.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents.

10.04.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and its agents an opportunity to perform an inspection of the Work.

10.04.2.1 Should corrections of the Work be required for approval, Contractor shall not cover up corrected Work until Owner indicates approval.

10.04.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to Owner of the anticipated need for a cover-up inspection. Should Owner fail to make the necessary inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Job Order Documents.

ARTICLE 11. CHANGES

11.01 Change Orders. A Change Order issued after execution of the Job Order is a written order to Contractor, signed by Owner, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Job Order or the Job Order Time. The Job Order Sum and the Job Order Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Job Order Sum and/or the Job Order Time. Owner may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties.

11.01.1 Owner, without invalidating the Job Order or this Agreement, may order changes in the Work within the general scope of the Job Order consisting of additions, deletions or other revisions, and the Job Order Sum and the Job Order Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Job Order Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Job Order, an equitable adjustment shall be made and confirmed in writing in a Change Order.

11.01.2 Owner and Contractor acknowledge and agree that the Job Order Documents may not be complete or free from errors, omissions and imperfections and that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner. Therefore, any minor errors, omissions or imperfections in the Job Order Documents, or any changes in or additions to the Job Order Documents to correct minor errors or omissions or to the Work ordered by Owner shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, or otherwise.

11.01.3 Procedures for administration of Change Orders shall be established by Owner and stated in the Owner's Division 00 or Division 01 Specifications, or elsewhere in the Job Order Documents.

11.01.4 No verbal order, verbal statement, or verbal direction of Owner or his duly appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.

11.02 Minor Changes. A/E, with concurrence of Owner, will have authority to order minor changes in the Work not involving an adjustment in the Job Order Sum or an extension of the Job Order Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on the Record Documents.

11.03 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Work, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Job Order Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, Owner and A/E shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of Owner, will promptly make such changes in the Job Order Documents as they deem necessary to conform to the different conditions, and any increase or decrease in the Job Order Sum, or in the Job Order Time, resulting from such changes will be adjusted by Change Order, subject to the prior approval of Owner.

11.04 Unilateral Change Order (ULCO). Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Job Order Sum and/or the Job Order Time.

11.04.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Job Order Sum or the Job Order Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The parties reserve their rights to dispute the ULCO amount.

11.05 Finality of Changes—Contractor. Upon execution of a Change Order and /or a ULCO by Owner, Contractor and A/E, all costs and time issues claimed by Contractor regarding that change are final and not subject to increase.

ARTICLE 12 ACCEPTANCE OF WORK

12.01 **Owner's Satisfaction:** All Work performed under this Agreement shall be completed to the satisfaction of the Owner's representative assigned to the Job Order. The Owner's representative shall decide all questions regarding Contractor's performance under the Agreement and such decisions shall be final and conclusive.

12.02 **Correction of Work:** Should Contractor's Work not conform to the requirements of this Agreement and the Job Order Proposal as determined by the Owner's representative, Owner may order the Contractor to correct the Work at no additional expense to the Owner or deduct the cost of correcting the Work from any other monies payable to the Contractor.

12.03 **Liability:** Owner's approval or acceptance of Contractor's Work will not release Contractor from any liability for any defects in the Work.

ARTICLE 13 COST PROPOSALS

13.01 **Required for Each Job Order:** Contractor shall prepare a cost proposal for each Job Order RFP requested by the Owner. The cost proposal shall identify the pre-priced items, the non-pre-priced items, and any other costs proposed to be included in the cost of the Job Order.

13.02 **Pre-priced Items:** Pre-priced items are pre-described and pre-priced tasks based on a unit price guide and coefficient multiplier. The cost proposal for each Job Order should be based substantially on the use of pre-priced items.

13.02.1 The Unit Price Guide is a compilation of real property repair, rehabilitation, alteration, maintenance, and minor construction tasks, along with associated units of measure and unit prices designated or provided by the Owner to be used in administration of this

Agreement. Unit prices include direct material, labor and equipment cost, but not indirect costs or profit. The Unit Price Guide for this Agreement is R.S. MEANS Facilities Construction Cost Data, 2016 Edition, which is hereby incorporated by reference. The most current edition of the Unit Price Guide shall be adopted before each renewal option exercised by the Owner.

13.03 The **Coefficient Multiplier** is a numerical factor which is applied to the Unit Price Guide unit prices to cover all of the Contractor's other costs in performing the Work of a Job Order including, but not limited to, general and administrative and other overhead costs, insurance costs, equipment rental, protective gear and clothing, contingencies such as changes in wage rates and inflation, Contractor's profit, and indirect costs. The Coefficient Multipliers for this Agreement are:

Initial Term	_____
First 1 Year Option	_____
Second 1 Year Option	_____
Third 1 Year Option	_____

13.04 **Non-Pre-priced Items:** Non-Pre-priced items are the necessary, but incidental, parts of a Job Order that are not susceptible to unit pricing using the pre-priced tasks in the Unit Price Guide. The proposed cost of all non-pre-priced items in the cost proposal shall include all Contractor cost items otherwise included in the coefficient multiplier used for pre-priced items. No coefficient multiplier shall be applied to non-pre-priced items. Non-pre-priced items shall not exceed ten percent (10%) of the total cost proposal for a Job Order.

13.05 **Other Costs:** Extraordinary costs that are unique to a specific Job Order and not generally or reasonably included in the coefficient multiplier may be added only if authorized or confirmed in writing by the Owner. Such extraordinary costs shall be calculated as a lump sum for the Job Order.

ARTICLE 14 PAYMENT

14.01 **Progress Payments:** Generally, payment shall be made upon completion of the Job Order. However, when requested by Contractor and reasonably appropriate for a specific Job Order, Owner may make periodic progress payments to the Contractor for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by the Owner of a correct and complete Application for Payment in electronic and/or hard copy format as set forth in the Agreement or the Division 00 or Division 01 Specifications, and certified by A/E. Payments are made provisionally and do not constitute acceptance of Work not in accordance with the Job Order Documents. Progress payments to Contractor do not release Contractor or its surety from any obligations under the Agreement. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.

14.02 **Stored Materials:** Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price.

14.03 **Retainage:** Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Division 00 or Division 01 Specifications. Retainage is managed in conformance with Tex. Gov't Code, Chapter 2252, Subchapter B.

14.04 Title to all material and Work covered by progress payments transfers to Owner upon payment. Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance.

ARTICLE 15 DISPUTE RESOLUTION

15.01 **Unresolved Contractor Disputes.** To the extent that it is applicable, the dispute resolution process provided for in Tex. Gov't Code, Chapter 2260, shall be used by Contractor to resolve any claim for breach of contract made by Contractor that is not resolved under procedures described in this Agreement.

15.02 **Alternative Dispute Resolution Process.** Owner may establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Chapter 2260.

15.03 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.

15.04 In any litigation between the Owner and the Contractor arising from this Agreement or any Job Order, neither party will be entitled to an award of legal fees or costs in any judgment regardless which one is deemed the prevailing party.

15.05 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.

ARTICLE 16 HISTORICALLY UNDERUTILIZED BUSINESSES

16.01 It is the policy of the Owner to encourage the use of Historically Underutilized Businesses ("HUBs") in all procurement, including Job Orders awarded under this Agreement. Contractor shall endeavor to identify HUB subcontractors and suppliers that can provide the best value for any particular Job Order.

ARTICLE 17 LIQUIDATED DAMAGES

17.01 The Notice to Proceed for each Job Order authorized by the Owner may include an amount that will be deducted from the Job Order Cost for each consecutive calendar day after the completion date established by the Notice to Proceed that any Work, including the correction of deficiencies found during the final testing and inspection, is not completed. The amount specified for a particular Job Order will be deducted not as a penalty but as liquidated damages representing the parties' estimate at the time of Job Order execution of the damages which the Owner will sustain for late completion.

ARTICLE 18 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

18.01 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.

18.02 All materials used on this Job Order shall be certified as non Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of its 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

18.03 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 Job Order to the Owner.

18.04 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 Job Order.

ARTICLE 19. WARRANTY AND GUARANTEE

19.01 Contractor's General Warranty and Guarantee. Contractor warrants to Owner that all Work is executed in accordance with the Job Order Documents, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Job Order are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Job Order Documents, and to accept a reduction in the Job Order Sum for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Job Order Documents is absolute and is not waived by any inspection or observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.

19.02 Warranty Period. Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work.

ARTICLE 20. SUSPENSION AND TERMINATION

20.01 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work if, after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work which constitutes an immediate safety hazard or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.

20.01.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.

20.01.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Job Order Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.

20.01.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.

20.02 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of this Agreement suspend all or any portion of the Work on any Job Order for a period of up to sixty (60) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Job Order Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Job Order pursuant to the provisions of this Agreement.

20.03 Termination by Owner for Cause.

20.03.1 Upon thirty (30) days written notice to Contractor, Owner may, without prejudice to any right or remedy, terminate this Agreement. Upon three (3) days written notice to Contractor, Owner may, without prejudice to any right or remedy, terminate any Job Order. Upon termination of a Job Order, Owner may take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:

- 20.03.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under this Agreement or the Job Order Documents, to supply enough properly skilled workmen or proper materials;
- 20.03.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including Owner;
- 20.03.1.3 Persistent failure to prosecute the Work in accordance with the this Agreement or the Job Order Documents, and to ensure its completion within the time, or any approved extension thereof, specified in the Job Order Documents;
- 20.03.1.4 Failure to remedy defective work condemned by Owner;
- 20.03.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Chapter 2251;
- 20.03.1.6 Persistent endangerment to the safety of labor or of the Work;
- 20.03.1.8 Any material breach of this Agreement; or
- 20.03.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform in accordance with the terms of this Agreement.
- 20.03.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 20.03.3 Upon receipt of a notice of termination of this Agreement, Contractor has thirty (30) days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy the condition(s) upon which the notice of termination was based with diligence and promptness. If the Owner is satisfied that the Contractor can remedy the reasons for the termination and perform under the terms of this Agreement as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time. Upon receipt of a notice of termination of a Job Order, Contractor has two (2) days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy the condition(s) upon which the notice of termination was based with diligence and promptness. If the Owner is satisfied that the Contractor can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.
- 20.03.4 If at the conclusion of the thirty (30) day cure period the Contractor is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may immediately terminate this Agreement, make alternative arrangements for completion of any Work in progress and deduct the cost of completion from any unpaid Job Order Sums. With respect to the termination of any Job Order, if at the conclusion of the thirty (30) day cure period the Contractor is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may immediately terminate the Job Order, make alternative arrangements for completion of the Work and deduct the cost of completion from any unpaid Job Order Sum.
 - 20.03.4.1 Owners cost to complete the Work includes, but is not limited to, fees for additional services by A/E and other consultants, and additional contract administration costs.

- 20.03.4.2 Owner will make no further payment to Contractor unless the costs to complete the Work are less than the balance of the Job Order Sum(s), then the difference shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor will pay the difference to Owner.
 - 20.03.4.3 This obligation for payment survives the termination of this Agreement.
 - 20.03.4.4 Owner reserves the right in termination for cause to take assignment of all contracts between Contractor and its Subcontractors, vendors, and suppliers. Owner will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.
- 20.04 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause is later determined to have been improper, the termination shall automatically convert to a termination for convenience and Contractor's recovery for termination shall be strictly limited to the payments allowable in a termination for convenience.
- 20.05 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the this Agreement and any Job Order being implemented under this Agreement prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:
 - 20.05.1 Owner will notify Contractor in writing specifying the reason for and the effective date of the Agreement or Job Order termination. The notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.
 - 20.50.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any dispute in determining or adjusting any amounts due at that point in the Contract:
 - 20.05.2.1 Stop all work.
 - 20.05.2.2 Place no further subcontracts or orders for materials or services.
 - 20.05.2.3 Terminate all subcontracts for convenience.
 - 20.05.2.4 Cancel all materials and equipment orders as applicable.
 - 20.05.2.5 Take appropriate action that is necessary to protect and preserve all property related to any and all Job Orders which is in the possession of Contractor.
 - 20.05.3 When a Job Order is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits or lost business opportunities.
- 20.06 Termination by Contractor. If the Work is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to Owner, terminate this Agreement and recover from Owner payment for all Work executed, but not lost profits or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate this Agreement.
- 20.07 Settlement on Termination. When this Agreement is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under this

Agreement. If Contractor fails to submit the proposal within the time allowed, Owner may unilaterally determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

ARTICLE 21 MISCELLANEOUS PROVISIONS

21.01 Independent Contractor: Contractor acknowledges that it is engaged as an independent contractor and that Owner shall have no responsibility to provide Contractor or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Contractor is responsible for all income taxes required by applicable law.

21.02 Confidentiality: The Contractor shall treat any Owner supplied information or information pertaining to Owner's business as confidential and shall not disclose any such information to others except as necessary for the performance of this Agreement or as authorized by the Owner in writing.

21.03 Successors and Assigns: The Owner and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this Agreement. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without written consent of Owner. The benefits and burdens of this Agreement are, however, assignable by Owner.

21.04 Subcontracting: The Contractor agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, the Contractor must identify the subcontractor(s) to Owner prior to any subcontractor beginning work. Submission and approval of a Historically Underutilized Businesses (HUB) Sub Contractor Plan or acceptance of a Job Order Proposal and issuance of a Purchase Order by Owner to Contractor is considered consent under this Article.

21.05 Loss of Funding: Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Contractor and Owner may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

21.06 Open Records: All information, documentation and other material submitted by the Contractor may be subject to public disclosure under the Public Information Act, Texas Government Code Chapter 552.

21.07 Family Code Child Support Certification: Pursuant to Section 231.006, *Texas Family Code*, the 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.

21.08 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.

21.09 Payment of Debt or Delinquency to the State: Pursuant to Sections 2107.008 and 2252.093, *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.

21.10 Taxes: The University of Texas System is a tax-exempt State of Texas Agency under Chapter 151, *Texas Tax Code* and an institution of higher education. Contractor shall avail itself of all tax exemptions applicable to Contractor's work or expenses.

21.11 **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.

21.12 **Severability:** Should any provisions(s) of this Agreement be held invalid or unenforceable in any respect, that provision shall not affect any other provisions and this Agreement shall be construed as if the invalid or unenforceable provision(s) had not been included.

21.13 **Waivers:** No delay or omission by either party in exercising any right or power provided under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver of the right or power. A written waiver granted by either of the parties of any provision of this Agreement shall not be construed as a future waiver of that provision or a waiver of any other provision of the Agreement.

21.14 **Force Majeure:** No party shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform under this Agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, terrorist acts or any other circumstances of like character.

21.15 **Governing Law and Venue:** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Texas without regard for choice of law principles. All obligations of the parties created hereunder are enforceable in Harris County, Texas.

21.16 **Entire Agreement:** This Agreement constitutes the sole and only agreement between the parties with respect to the services contracted for and supersedes any prior understandings, written or oral. No modification, alteration or waiver of this Agreement or any of its provisions shall be effective unless in writing and signed by both parties. No course of prior dealings, no usage of trade, and no course of performance shall be used to modify, supplement or explain any terms used in this Agreement.

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

21.18 **Products and Materials Produced in Texas:** If Contractor will provide services under this Agreement, Contractor covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

21.19 **Authority to Act:** If Contractor is a corporation or a limited liability company, Contractor warrants, represents, and agrees that (1) it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and (4) the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

21.20 **Records:** Records of expenses pertaining to additional services, services performed on the basis of a Worker Wage Rate or Monthly Salary Rate, or reimbursable expense, if allowed, 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.

21.21 **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.

21.22 **No Damages for Delay.** An extension of the Job Order Time shall be the sole remedy of Contractor for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work and then only to the extent such acts continue after Contractor notifies Owner in writing of such interference. For

delays caused by any act(s) other than the sole intentional interference of Owner, Contractor shall not be entitled to any compensation or recovery of any damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages. Owner's exercise of any of its rights or remedies under This Agreement including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies.

ARTICLE 22 NOTICES

22.01 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may delivered in person to the designated representative of the Contractor or Owner; mailed by U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

22.02 The initially designated representatives of the parties for receipt of notices are as follows. Either party may change their designated representative for receipt of notices by written notice.

(a) If to Owner: Weldon Gage,
Senior Vice President and Chief Financial Officer
1515 Holcombe Blvd., Box 1495
Houston, TX 77030
Email: wgage@mdanderson.org

(b) With Copies to: Bill Bailey
Executive Director, Facilities Finance
6900 Fannin, Suite FHB11.1022
Houston, TX 77030
Email: bbailey@mdanderson.org

(c) If to Contractor: _____

Email: _____

EXHIBITS TO THIS AGREEMENT

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

Exhibit A – Owner’s Special Conditions and Specifications with the date they were issued

Exhibit B – List of Drawings, Specifications Addenda, details and other documents developed by the
Project Architect that describe the Project with the date they were issued

Exhibit C – Respondent’s Pricing and Delivery Proposal

Exhibit D – Execution of Offer

Exhibit E – Rider 104A – HUB Subcontracting Plan

Exhibit F – Vendor’s Letter of HUB Commitment

Exhibit G – Rider 105; Vendor Affirmation

Exhibit H – Rider 106; Premises Rules

Exhibit I – Rider 107; Travel Policy

Exhibit J – Rider 116; Invoice Payment Requirements

Exhibit K – Rider 107; Travel Policy

Exhibit L – Rider 116; Invoice Payment Requirements

Exhibit M – Rider 117; Compliance with Institutional Policies

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)

By: _____
(original signature)

Name: Spencer Moore

Name: _____

Title: Vice President and Chief Facilities Officer

Title: _____

Date: _____

Date: _____