

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
for
Construction Services
for
The University of Texas MD Anderson Cancer Center**

This Agreement is made as of _____, 20____ (the “Effective Date”), by and between

The Owner: The Board of Regents of The University of Texas System
c/o The University of Texas MD Anderson Cancer Center
1515 Holcombe Blvd.
Houston, Texas 77030

and **Contractor:**

Texas Tax Account No. :

for the **Project:** CPB Sanitary Sewer Drain Line and Lift Station

MD Anderson Project Number: 170210

Agreement Number:

UTUGC Version: 2013

Project Engineer: Shah Smith and Associates, Inc.
2825 Wilcrest Drive, Suite 350
Houston, Texas 77042

**Owner Controlled
Insurance Program (OCIP):** No

**Owner Provided Builder’s
Risk Insurance:** No

The Owner and the Contractor agree as follows:

TABLE OF CONTENTS

ARTICLE

- 1 SCOPE OF WORK
- 2 CONTRACT DOCUMENTS
- 3 THE CONTRACT SUM
- 4 TIME OF COMPLETION
- 5 LIQUIDATED DAMAGES

- 6 HUB SUBCONTRACTING PLAN
- 7 SAFETY
- 8 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

- 9 PRE-EXISTING CONDITIONS
- 10 BONDS AND INSURANCE
- 11 OCIP INSURED PROJECT (Optional)
- 12 CONTRACTOR'S SPECIAL WARRANTIES AND RESPONSIBILITIES

- 13 INDEMNITY
- 14 PARTY REPRESENTATIVES
- 15 NOTICES
- 16 MISCELLANEOUS PROVISIONS

LIST OF EXHIBITS

The following Exhibits are incorporated into the Agreement as if set out verbatim:

- Exhibit A – 2013 Uniform General Conditions for University of Texas System Building Construction Contracts
- Exhibit B – Owner's Division 00 and Division 01 Specifications
- Exhibit C – List of Drawings, Specifications Addenda, details and other documents developed by Project Engineer that describe the Project with the date they were issued.
- Exhibit D – Rider 104-C; Policy on Utilization Historically Underutilized Businesses
- Exhibit E – Contractor's Approved HUB Subcontracting Plan
- Exhibit F – Rider 105; Contractor's Affirmations and Warranties
- Exhibit G – Rider 106; Premises Rules
- Exhibit H – Rider 107; Travel Policy
- Exhibit I – Rider 116; Invoice Payment Requirements
- Exhibit J – Rider 117; Institutional Policies
- Exhibit K – Respondent's Pricing and Delivery Proposal and Execution of Offer
- Exhibit L – Performance and Payment Bonds

Capitalized words or phrases appearing within this Agreement are defined herein or in the Uniform General Conditions for University of Texas System Building Construction Contracts attached hereto.

ARTICLE 1 SCOPE OF WORK:

The Contractor has overall responsibility for and shall provide and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS:

2.1 The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The Uniform General Conditions for The University of Texas System Building Construction Contracts (UTUGC), applicable version identified, above;
- c. Special Conditions and Owner's Specifications;
- d. All Addenda issued before the Effective Date of this Agreement;
- e. All Proposals for Alternate Scopes of Work and Proposed Alternates accepted by the Owner before the Effective Date of this Agreement;
- f. All Change Orders issued after the Effective Date of this Agreement;
- g. The Drawings, Specifications, details and other documents developed by Project Engineer to describe the Project and accepted by Owner;
- h. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and
- i. The HUB Subcontracting Plan submitted by the Contractor in response to the Request for Competitive Sealed Proposals issued by the Owner for this Project.
- j. Contractor's Proposal if incorporated into the Project. To the extent of any conflict between Contractor's Proposal and any other Contract Document, the Contract Document shall govern.

2.2 Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

ARTICLE 3 THE CONTRACT SUM:

3.1 The Owner shall pay the Contractor for performance of the Work set forth in the Contract Documents, including the Base Scope of Work, Alternates Scope(s) of Work, and accepted Proposed Alternates, the sum of _____ Dollars (\$_____), and make payment on account as provided in the UTUGCs.

3.2 Alternate Scope(s) of Work [NOT USED].

3.3 [EDIT IF PROPOSED ALTERNATES HAVE BEEN ACCEPTED]. The following alternate means, methods, materials or combination thereof proposed by the Contractor (Proposed Alternates), have been accepted by the Owner and are included as part of the Contract Sum:

ARTICLE 4 TIME OF COMPLETION:

The Owner shall issue a Notice to Proceed with Construction identifying the date for commencement of the Work. The Date of Commencement shall be 10 or more days after the date the notice is issued. The Contractor shall achieve Substantial Completion of the Work within **One Hundred Eighty (180) calendar days** after the Date of Commencement, 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 5 LIQUIDATED DAMAGES:

For each consecutive calendar day after the expiration of the substantial completion period set forth in Article 4 that any incomplete Work prevents or impairs the Owner's ability to operate and use the Project for its intended purposes, including the correction of deficiencies found during the final testing and inspection, the amount of **Two Hundred Dollars (\$200.00)** will be deducted from the money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of executing this Agreement of the damages that the Owner will sustain for late completion.

ARTICLE 6 HUB SUBCONTRACTING PLAN:

The Owner has adopted 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. 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 7 SAFETY:

7.1 In accordance with the UTUGCs, Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations and with the requirements of Owner's project safety specification.

7.2 Contractor shall provide recommendations and information to Owner and Project Engineer regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Contractor's safety responsibilities.

ARTICLE 8 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK:

8.1 The Contractor shall be responsible for ensuring that no asbestos containing materials or work is included within the scope of the Work. The Contractor shall take whatever measures it deems necessary to

insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

8.2 The Contractor shall ensure 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.

8.3 At Substantial Completion and Final Completion the Contractor shall provide a certification letter certifying that the Work does not contain asbestos as required by the UTUGCs.

ARTICLE 9 PRE-EXISTING CONDITIONS:

Prior to commencing the Work, Contractor shall be provided unrestricted access to the existing improvements and conditions on the Project site and shall thoroughly investigate those conditions. Contractor shall bring to Owner's attention any unexpected or differing conditions that may impact the Contract Time or the Contract Sum. Contractor acknowledges and agrees that it shall not make or be entitled to any adjustment to the Contract Time or the Contract Sum arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation prior to commencing the Work.

ARTICLE 10 BONDS AND INSURANCE:

10.1 The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the UTUGCs. The penal sum of the payment and performance bonds shall be equal to the Contract Sum.

10.2 The Contractor shall not commence work under the Agreement until it has obtained all insurance coverage as required by the UTUGCs and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor.

10.3 In the event that the Owner **does** implement an Owner Controlled Insurance Program (OCIP) for this Project, the Contractor shall refer to the OCIP specification for a complete listing of coverages provided by the OCIP. Any coverages required by the UTUGCs that is not provided through the OCIP shall be provided by the Contractor.

ARTICLE 11 ROCIP INSURED PROJECT:

11.1 Rolling Owner Controlled Insurance Program (ROCIP): [NOT APPLICABLE]

11.2 Owner Provided Builders Risk Insurance: [NOT APPLICABLE]

ARTICLE 12 CONTRACTOR'S SPECIAL WARRANTIES AND RESPONSIBILITIES:

12.1 Contractor agrees and acknowledges that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best

efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

12.2 Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

12.3 Contractor's duties shall not be diminished by any approval by Owner nor shall the Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the services required by this Agreement.

12.4 Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

12.5 Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

12.6 The Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

12.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

12.8 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

12.9 Contractor shall designate a representative authorized to act on Contractor's behalf with respect to the Project.

12.10 Contractor shall establish and maintain a numbering and tracking system for all Project records including, but not limited to, changes, requests for information, submittals, and supplementary instructions and shall provide updated records to the Owner when requested.

12.11 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner, The University of Texas System, or of the components comprising The University of Texas System, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

ARTICLE 13 INDEMNITY:

13.1 SEE ARTICLE 3 OF THE UNIFORM GENERAL CONDITIONS FOR UNIVERSITY OF TEXAS SYSTEM BUILDING CONSTRUCTION CONTRACTS FOR CONTRACTOR'S GENERAL INDEMNIFICATION OBLIGATIONS.

ARTICLE 14 PARTY REPRESENTATIVES:

14.1 The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Whitley Robinson, AIA
Executive Director,
Facilities Planning, Design & Construction
1515 Holcombe Blvd., Unit 0703
Houston, TX 77030

14.2 The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

[Name]
[Title]
[Address]
[Phone Number]
[Email Address]

14.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

ARTICLE 15 NOTICES:

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:

Ben Melson
Senior Vice President & Chief Financial Officer
1515 Holcombe Blvd., Unit 1495
Houston, Texas 77030

With Copies to:

William E. Bailey, J.D., C.P.A.
Executive Director, Facilities Finance
Operations and Facilities Management
6900 Fannin, Suite 11.1022
Houston, Texas 77030

If to Contractor:

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

ARTICLE 16 MISCELLANEOUS PROVISIONS:

16.1 Assignment. 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 the written consent of the Owner.

16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 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.

16.8 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. Travis County, Texas or the county where the Project is located shall be the sole places of

venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

16.9 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance 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.

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

16.11 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.

16.12 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.

16.13 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 known 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.

16.14 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.

16.15 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.

16.16 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 contract.

16.17 Ethics Matters; No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, University's Standards of Conduct Guide available at <http://www.utsystem.edu/systemcompliance/>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor

represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

EXHIBITS TO THIS AGREEMENT

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

Exhibit A – 2013 Uniform General Conditions for University of Texas System Building Construction Contracts

Exhibit B – Owner’s Division 00 (Conditions of the Contract) and Division 01 (General Requirements) Specifications

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

Exhibit D – Rider 104-C Policy on Utilization Historically Underutilized Businesses

Exhibit E – Contractor’s Approved HUB Subcontracting Plan

Exhibit F – Rider 105; Contractor’s Affirmations and Warranties

Exhibit G – Rider 106; Premises Rules

Exhibit H – Rider 107; Travel Policy

Exhibit I – Rider 116; Invoice Payment Requirements

Exhibit J – Rider 117; Institutional Policies

Exhibit K – Respondent’s Pricing and Delivery Proposal and Execution of Offer

Exhibit L – Performance and Payment Bonds

Owner's Standard Agreement

BY SIGNING BELOW, Contractor has executed and bound itself to this Agreement upon the execution of the Agreement by both parties. No modification, alteration or waiver of this Agreement or any of its provisions shall be effective unless in writing and signed by both parties. Substantive changes in the terms and conditions under which the Contractor must perform the Work to be completed under this Agreement shall become effective only upon the execution of a written Amendment to this Agreement. Changes in the Work, the Contract Sum, or the Contract Time shall become effective upon the execution of a Change Order, signed by duly authorized representatives of the parties, except as otherwise provided in the UTUGCs. Contractor shall be authorized to proceed with the change as of the Notice to Proceed date set forth in the Change Order. Subsequent to the issuance of a Change Order, Owner will issue a revised Purchase Order to Contractor. Contractor must receive the revised Purchase Order prior to requesting compensation for Work to be completed under the Change Order in its Application for Payment. Only duly authorized representatives of Owner's Division of Supply Chain Management are authorized to execute amendments to this Agreement and issue Purchase Orders to bind Owner for any payment to be made to Contractor pursuant to the terms of this Agreement.

(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
Title: Vice President and Chief Facilities Officer

Name: _____
Title: _____

Date: _____

Date: _____