

**MASTER AGREEMENT FOR JOB ORDER CONTRACTING SERVICES  
IN THE BASTROP COUNTY, TEXAS AREA**

This Master Agreement is made as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”),

By and between

**Owner:** THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER  
An Institution of The University of Texas System and  
An Agency of the State of Texas

**And Contractor:** Name and Address of Job Order Contracting Company

for: The University of Texas MD Anderson Cancer Center  
Job Order Contracting Program for Facilities in the  
Bastrop County, Texas Area

Uniform General Conditions for University of Texas System  
Building Construction Contracts (“UTUGCs”) Version:

**2013 (June 20, 2018)**

This Master Agreement for Job Order Contracting Services (“Master Agreement”) is for the provision of specified construction contracting services associated with Owner’s Job Order Contracting Program for the construction, renovation and maintenance of its facilities in the Bastrop County, Texas area (the “Work”). Such Work is to be performed on a non-exclusive, indefinite quantity basis, as requested by Owner in accordance with the terms of this Master Agreement. Contractor represents that Contractor has the knowledge, ability, skills and resources to provide such Work in accordance with the terms and requirements of this Master Agreement. Contractor agrees to provide such Work on a per-project (“Job Order”) basis as requested by Owner in accordance with the terms of this Master Agreement. 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 implemented pursuant to Owner’s Job Order Contracting program.

Capitalized words and terms used in this Master Agreement shall have the meanings set forth herein or the meanings set forth in the UTUGCs included as an Exhibit hereto, unless the context clearly indicates otherwise.

Contractor and Owner agree as follows:

## ARTICLE 1                    TERM OF AGREEMENT

1.01    **Initial Term:** The initial term of this Master Agreement shall begin on the Effective Date and shall expire two (2) years after that date unless renewed or terminated in accordance with the terms of this Master Agreement.

1.02    **Renewal Option:** Owner has the option to renew the term of this Master Agreement for two (2) successive two (2) year periods upon written notice to Contractor at least sixty (60) days prior to the expiration of the initial or any subsequent term.

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

## ARTICLE 2                    AGREEMENT VALUE

2.01    **Maximum Value:** The overall maximum value of this Master Agreement is indefinite, subject to the contractual authority delegated by the UT System Board of Regents to Owner. The price for each specifically authorized Job Order (“Job Order Price”) will be established through the development and acceptance of a Job Order Proposal in accordance with the terms of this Master Agreement and confirmed by way of purchase order issued by Owner to Contractor (“Purchase Order”). A Job Order Price shall not be adjusted except by written Change Order to a duly executed Job Order.

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

## ARTICLE 3                    SCOPE OF WORK—SPECIFIC JOB ORDER PROJECTS

3.02    **In General:** Contractor agrees to provide general and specific construction services on a per-project basis as requested by Owner in accordance with the terms of this Master Agreement. Contractor shall furnish all of the materials and equipment and perform all of the Work shown on the drawings (the “Drawings”) and described in the specifications (“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. Contractor shall do everything required by this Master Agreement, the Uniform General Conditions for University of Texas System Building Construction Contracts (“UTUGCs”), Owner’s Division 00 and Division 01 Specification Sections included as Exhibits hereto, and any and all Specifications and Drawings prepared for the Job Order and any other requirements incorporated into this Master Agreement or a specific Job Order by reference (“Job Order Documents”).

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

3.04    **Job Order RFP:** Owner shall prepare a Job Order Request for Proposal (“Job Order RFP”) identifying the Work to be completed under the Job Order and describing in Drawings, Specifications and other appropriate materials, the intended scope and character of the Work, and the milestone schedule for completing the Work. For Job Orders with an anticipated price of \$100,000 or more,

Owner shall determine whether subcontracting opportunities exist and require a HUB subcontracting plan (“HSP”) as part of the Job Order Proposal, as required.

**3.05 Job Order Proposal:** In response to a Job Order RFP, Contractor shall provide Owner with a written Job Order Proposal. Upon Contractor’s request, Owner will provide Contractor with reasonable access to the Job Order site for the purpose of gathering information needed to facilitate the preparation of the 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 project schedule;
- c. A Job Order Price Proposal (prepared in accordance with Article 7, below) detailing:
  1. the proposed firm, fixed price amount for the Pre-priced Items as developed from the Unit Price Guide;
  2. the proposed firm, fixed price amount for any Non-Pre-priced Items;
  3. the proposed amount for any Other Cost Items that the Contractor proposes to charge for completing the Job Order, along with a statement for each Other Cost Item as to whether Contractor is proposing to furnish that item on lump sum basis or a not-to-exceed price basis;
  4. a statement that all Contractor fees, overhead expenses and general conditions are included in the Job Order Price Proposal; and
- d. A proposed date to commence the Work
- e. A proposed duration, in calendar days, for completing the Work;
- f. A list of all subcontractors that Contractor proposes to use in the performance of the Work;
- g. A copy of the RSMeans “Estimator” printout used to determine the amount for the Pre-priced Items;
- h. A HUB Subcontracting plan, if required;
- i. Any qualifications or conditions applicable to the Job Order Proposal.

**3.06 Job Order Proposal Review:** Owner and Contractor shall review Contractor’s Job Order Proposal and negotiate any changes, clarifications or modifications as required. Contractor shall submit a revised Job Order Proposal incorporating any changes, clarifications or modifications requested by Owner during the review process. Owner may accept, reject or seek modification of any Job Order Proposal.

**3.07 Notice to Proceed:** Upon acceptance of a specific Job Order Proposal by Owner, Owner shall issue a written Purchase Order to Contractor. Subsequent to, or concurrent with, the issuing of the Purchase Order, Owner will issue a written Notice to Proceed to Contractor. The Notice to Proceed will authorize Contractor to begin the Work identified in the Job Order Proposal on the Date of Commencement in the Notice to Proceed. Contractor shall complete the Work within the number of days specified in the Job Order Proposal accepted by Owner (“Job Order Time”), subject to extensions of time approved by Owner through a valid Change Order. The time set forth for completion of the Work for each Job Order is of the essence and 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 CONTRACTOR’S GENERAL RESPONSIBILITIES**

**4.01 Job Order Manager:** Contractor shall manage the Work on each Job Order authorized pursuant to this Master Agreement. Contractor shall provide all labor and material necessary and reasonably inferable for the complete performance of the Work associated with each Job Order authorized pursuant to this Master Agreement.

4.02 **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, and the Work to be completed thereunder, authorized pursuant to this Master 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.

4.03 **Compliance with Laws:** Contractor shall perform the Work in compliance with all applicable federal, state, and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Job Order or the Work to be completed thereunder.

4.04 **Pre-Existing Conditions:** Prior to commencing the Work, Contractor shall be provided access to the existing improvements and conditions on the Job Order site and shall thoroughly investigate those conditions. Contractor shall bring to Owner's attention, in writing, any unexpected or differing conditions that may impact the Job Order Time or the Job Order Price. Contractor acknowledges and agrees that it shall not make or be entitled to any adjustment to the Job Order Time or the Job Order Price arising from conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

4.05 **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.

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

4.07 **Representatives:** Contractor shall designate a representative primarily responsible for the administration of this Master Agreement, as well as a representative primarily responsible for the Work associated with each Job Order executed under this Master Agreement. The designated administrative representative shall act on behalf of Contractor with respect to Work provided by Contractor under the Master Agreement and shall be available as required for benefit of Owner. The designated representative for each Job Order 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 Owner. Neither the representative designated for the administration of this Master Agreement nor a representative designated to manage a specific Job Order shall be changed without prior written approval of Owner, which approval shall not be unreasonably withheld.

4.08 **Documentation:** Contractor shall fully document its project activities, in Drawings, reports or other methods as appropriate to the scope of Work and as identified in the Job Order Proposal. Contractor shall bear the cost of providing all plans, Specifications, Drawings, and other documents used by Contractor and its Subcontractors.

4.09 **Job Order Cost Estimating:** Contractor will obtain and use, at Contractor's expense, for automation and estimation standardization purposes, the estimating software called RSMeans CostWorks. Contractor shall not avail itself of any electronic updates to the software which amend the unit prices contained in the software, except at the start of each renewal period when the Unit Price Guide is updated as set forth below. Contractor shall utilize the RSMeans "Location Factors" for Texas > Austin (786) to develop the Job Order Price. Contractor shall not utilize RSMeans "Assemblies" to develop the Job Order Price. In the event of a discrepancy in unit prices between the estimating software and the Unit Price Guide specified below, the unit prices published in the Unit Price Guide specified below shall prevail.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

5.01 **Job Order RFP:** Owner shall provide a Job Order RFP setting forth Owner's description of the Job Order scope in Drawings, Specifications (or other documents appropriate to the nature of the Job Order), milestone schedule, objectives, characteristics and constraints, and a description of the Work to be provided by Contractor for the Job Order.

5.02 **Owner's Representatives:** Owner will designate a representative authorized to act in Owner's behalf with respect to the Job Order. Contractor shall coordinate its Work solely through the representative designated for the Job Order. Owner designates its Associate Vice President for Facilities Planning, Design and Construction or her or his designee as its representative for the purpose of administering this Master Agreement and as its representative in any dispute resolution proceedings.

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

5.04 **Entry on Land:** Owner shall assist Contractor in gaining entry to state-owned or state-controlled property as necessary for Contractor to perform its Work under this Master Agreement.

5.05 **Administrative Services:** Owner shall furnish all legal, accounting, auditing and insurance counseling services that it requires for a specific Job Order or the administration of this Master Agreement.

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

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

## ARTICLE 6 ACCEPTANCE OF WORK

6.01 **Owner's Satisfaction:** All Work performed under this Master Agreement shall be completed to the satisfaction of Owner's representative assigned to the Job Order. Owner's representative shall decide all questions regarding Contractor's performance with respect to a given Job Order as well as Contractor's general performance under this Master Agreement and such decisions shall be final and conclusive.

6.02 **Correction of Work:** As determined by Owner's representative, should Contractor's Work not conform to the requirements of this Master Agreement or those established for a specific Job Order, Owner may order Contractor to correct the Work at no additional expense to Owner or deduct the cost of correcting the Work from any other monies payable to Contractor.

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

## ARTICLE 7                      JOB ORDER PROPOSALS

7.01     **Required for Each Job Order:** Contractor shall prepare a proposal for each Job Order RFP issued by Owner. The proposal shall identify the Pre-priced Items, the Non-Pre-priced items, and any Other Cost Items proposed to be included in the price for the Work to be completed under the Job Order.

7.02     **Pre-priced Items:** Pre-priced Items are hereby defined to mean the pre-described and pre-priced tasks included in the Unit Price Guide and are subject to the application of the Coefficient Multiplier and the Location Factor. The proposed price for each Job Order shall be based substantially on the use of Pre-Priced Items. The unit price of each Pre-Priced Item shall be the amount set forth in the "Total Incl O&P" (Total Including Overhead & Profit) column of the Unit Price Guide for that item.

7.02.1   **Unit Price Guide:** Unit Price Guide is hereby defined to mean 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 Owner to be used in administration of this Master Agreement. The Unit Price Guide for this Master Agreement is **Gordian Facilities Construction Costs Book with RSMeans data, 2019 Edition**, which is hereby incorporated by reference. The most current edition of the Unit Price Guide shall be adopted for each renewal option exercised by Owner.

7.02.2   **Coefficient Multiplier:** Coefficient Multiplier is the numerical factor that shall be applied to the Unit Price Guide unit prices to cover all of 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 Multiplier for this Master Agreement is \_\_\_\_\_ and is to be in effect for the initial term and all renewal terms. The Coefficient Multiplier shall only be applied to Pre-Priced Items.

7.02.3   **Location Factor:** Location Factor is the numerical factor that is to be applied to the sum of the Pre-Priced Items to adjust the price to Austin, Texas, which is hereby deemed to be the geographical location of Owner's Bastrop and Smithville campuses. The Location Factor for this Master Agreement is hereby stipulated to be the "Location Factor – Total" value set forth in the Unit Price Guide for Austin, Texas ("State/Zip 786-787").

7.03     **Non-Pre-priced Items:** Non-Pre-priced items are hereby defined to mean 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 amount for each Non-Pre-priced Item in the Job Order proposal shall be a firm, fixed price and shall include all Contractor cost items otherwise included in the Coefficient Multiplier used for Pre-priced Item. Non-Pre-priced items shall not exceed ten percent (10%) of the total proposed price for a Job Order, unless Owner expressly approves otherwise.

7.04     **Other Cost Items:** Other Cost Items are hereby defined to mean extraordinary costs that are unique to a specific Job Order and not generally or reasonably included in the Coefficient Multiplier, and may be included only if authorized or confirmed in writing by Owner. Other Cost Items may be priced as a lump sum (or a firm-fixed amount) or on a "not-to-exceed" basis for the Job Order.

7.04.1   **Unit Price for Medical Clearance:** Medical Clearance is hereby defined to mean the submittal to, and approval by, Owner of all medical documentation needed to comply with

Owner's requirements – as set forth in Specification Section 00 25 00 JO-BSV – related to insuring that workers have met all medical conditions precedent for entering into certain areas of Owner's Bastrop and/or Smithville Campuses. The Unit Price to paid to Contractor for obtaining medical clearance for those workers who are required to obtain medical clearance in order to complete the Work associated with a given Job Order is hereby stipulated to be \_\_\_\_\_ (\$\_\_\_\_\_) per worker, said amount shall be payable only for those workers who have passed a background check as required under the terms of this Agreement prior to being sent to obtain Medical Clearance. This Unit Price for Medical Clearance shall apply to the initial medical clearance for a worker and any subsequent six-month tuberculosis (TB) screening requirement attributed to the duration of the Job Order Time. Contractor shall only be paid the stipulated Unit Price for Medical Clearance for workers that successfully complete the required medical documentation and receive a negative result from the initial TB screening. The Coefficient Multiplier shall not be applied to the Unit Price for Medical Clearances.

## **ARTICLE 8                      TERMINATION AND SUSPENSION**

- 8.01    **Termination of Master Agreement:** Owner reserves the right, without breach, to terminate this Master Agreement prior to, or during, the performance of any Work being implemented hereunder, for any reason. Upon such termination, the requirements set forth in Section 14.5 of the UTUGCs shall apply. For the purpose of interpreting the requirements of the UTUGCs, the term "Contract", as used therein shall be synonymous with the "Master Agreement" unless the context clearly requires otherwise.
- 8.02    **Termination or Suspension of Job Order:** Job Orders being implemented under the terms of this Master Agreement may be terminated or suspended in accordance with the terms set forth in Article 14 of the UTUGCs. For the purpose of interpreting the requirements of the UTUGCs, the term "Contract", as used therein, is synonymous with the term "Job Order" unless the context clearly requires otherwise.

## **ARTICLE 9                      PAYMENT**

9.01    **In General:** Owner shall pay Contractor for the Work performed on Job Orders authorized by Owner via the issuance of a Purchase Order, subject to allowable additions and deductions, and make payment on account as provided in the UTUGCs. All payment requests shall be submitted on an Application for Payment with a Schedule of Values approved by Owner and include all required attachments identifying payments to Historically Underutilized Businesses and to all Subcontractors. Payment for approved Change Orders shall be made as part of Contractor's Application for Payment.

9.02    **Payment for Pre-Priced Items and Non-Pre-priced Items:** Payments for Pre-priced Items and Non-Pre-priced Items shall be made based on the percentage completion of the Work in accordance with the Schedule of Values.

**9.03 Payment for Other Cost Items:**

9.03.1 Other Cost Items Included on a Firm, Fixed Price Basis: Payments for Other Cost Items that are established on a firm, fixed price basis shall be made based on the percentage completion of the Other Cost Item in accordance with the Schedule of Values.

9.03.2 Other Cost Items Included on a Not-to-Exceed Basis: Each Other Cost Item that is included in the Job Order Price on a not-to-exceed basis shall be identified on a single line within the Schedule of Values. For each such item, Contractor's Application for Payment shall include complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence which Owner shall deem necessary to support the amount requested. This information will be subject to audit. Payment for these items shall be dependent on Owner's receipt of accurate and complete records of all transactions. Owner may reduce the amount requested for such items in any Application for Payment if Owner, in its good faith judgment, determines that the unpaid balance of the item in the Schedule of Values is not sufficient to fund necessary cost for that item for the remainder of the Job Order.

**ARTICLE 10 DISPUTE RESOLUTION**

10.01 To the extent that it is applicable, the dispute resolution process provided for in Texas Government 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 Master Agreement.

10.02 Owner may establish a dispute resolution process to be utilized in advance of that outlined in Texas Government Code, Chapter 2260.

10.03 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.

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

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

**ARTICLE 11 HISTORICALLY UNDERUTILIZED BUSINESSES**

11.01 It is the policy of Owner to encourage the use of Historically Underutilized Businesses ("HUBs") in all procurement, including Job Orders awarded under this Master Agreement. Contractor shall endeavor to identify HUB subcontractors and suppliers that can provide the best value for any particular Job Order. On any individual Job Order where the Job Order Price exceeds \$100,000 and where Owner has determined that subcontracting opportunities exist, Contractor shall prepare a HUB subcontracting plan that complies with Owner's Rider 104, Policy on Utilization of Historically Underutilized Businesses, which is included as an Exhibit hereto, and shall comply with all other requirements of the policy.

11.02 For all Job Orders for which Contractor has engaged HUB Subcontractors, in accordance with Owner's Policy on Utilization of Historically Underutilized Businesses Contractor shall report on the



progress of payments made to each HUB Subcontractor concurrent with the submittal of each Application for Payment. Failure to timely comply with the progress assessment requirements shall be grounds for rejection of the Application for Payment and its return to Contractor.

## **ARTICLE 12                    LIQUIDATED DAMAGES**

12.01    The Job Order RFP for each Job Order authorized by Owner may include an amount that will be deducted from the Job Order Price for each consecutive calendar day after the Substantial Completion date set forth in 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 issuance of the Purchase Order for the Job Order of the damages which Owner will sustain for late completion.

## **ARTICLE 13                    CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK**

13.01    For each Job Order, Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or Work is included within the scope of the proposed submittal.

13.02    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.

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

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

13.05    All materials used as Job Order shall be certified as non-Asbestos Containing Building Materials ("non-ACBM"). Contractor shall insure compliance with the following acts from all of its Subcontractors and assigns:

- 13.05.1    Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
- 13.05.2    National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;
- 13.05.3    Texas Asbestos Health Protection Rules (TAHRP—*Texas Administrative Code* Title 25, Part 1, Ch. 295C, Asbestos Health Protection

13.06    Every Subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on the Job Order site or Owner's premises.

13.07    Contractor shall provide, in hard copy and electronic form, all necessary material Safety Data Sheets (SDS) of all products used in the construction of the Job Order to Owner.

13.08 At Final Completion, Contractor shall provide a notarized certification statement per *Texas Administrative Code* Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Job Order.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

14.01 **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. No employer-employee, partnership, or joint venture relationship is created by this Master Agreement or by Contractor's service to Owner. Except as specifically required under the terms of this Master Agreement, Contractor will not represent itself to be an agent or representative of Owner or The University of Texas System or the State of Texas.

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

14.03 **Successors and Assigns:** Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this Master Agreement. This Master Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Master 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 Master Agreement are, however, assignable by Owner. Notwithstanding anything to the contrary herein, any assignment of this Master Agreement or the subcontracting of any Work to be performed hereunder shall not relieve Contractor of its obligations hereunder.

14.04 **Subcontracting:** Contractor agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, Contractor must identify the subcontractor(s) to Owner prior to any subcontractor beginning Work. Submission and approval of a Historically Underutilized Businesses (HUB) Subcontracting Plan is considered consent under this Article.

14.05 **Loss of Funding:** Performance by Owner under this Master 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 Master Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

14.06 **Open Records:** This Master Agreement and related information may be subject to public disclosure under Chapter 552, *Texas Government Code*. Contractor will be deemed to have knowledge of this law and the means of protecting Contractor's legitimate interests..

14.07 **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 Master Agreement and acknowledges that this Master Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**14.08 Franchise Tax Certification:** If 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.

**14.09 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 Master 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.

**14.10 Taxes:** Owner is a tax-exempt State of Texas agency and an institution of higher education. Notwithstanding its exemption from certain state and federal taxes, Owner will be responsible for any taxes it may be liable for and from which Owner is not exempt. Notwithstanding anything to the contrary herein, Owner shall never be liable for Contractor's federal or state income taxes, franchise taxes, or taxes on Contractor's Personnel, including personal income tax and social security taxes associated therewith. Contractor will cooperate with, and provide reasonable assistance to, MD Anderson in obtaining any tax exemptions to which MD Anderson is entitled.

**14.11 State Sales and Use Taxes:** Owner qualifies for exemption from certain state and local sales and use taxes pursuant to the provisions of Texas 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.

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

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

**14.14 Waivers:** No delay or omission by either party in exercising any right or power provided under the provisions of this Master 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 Master Agreement shall not be construed as a future waiver of that provision or a waiver of any other provision of the Master Agreement.

**14.15 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 Master 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.

**14.16 Governing Law and Venue:** This Master Agreement will be construed under and in accordance with the laws of the State of Texas without reference to its conflicts of law provisions. Subject to the sovereign immunity of the State of Texas, any lawsuit brought against Owner under this Agreement may only be filed in the State District Court in Harris County or Travis County, Texas.

**14.17 Entire Agreement:** This Master Agreement constitutes the sole and only agreement between the parties with respect to the Work contracted for and supersedes any prior understandings, written or oral. No modification, alteration or waiver of this Master 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 Master Agreement.

**14.18 No 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 Master Agreement.

**14.19 Products and Materials Produced in Texas:** If Contractor will provide services under this Master Agreement, Contractor covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Master 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.

**14.20 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 Master Agreement; and (4) the individual executing this Master Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

**14.21 Records:** Records of expenses pertaining to services performed on the basis of a Worker Wage Rate or Monthly Salary Rate, or reimbursable expenses, 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 Owner or Owner's authorized representative on reasonable notice.

**14.22 Illegal Dumping:** 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.

**14.22 Ethics Matters:** Contractor and its employees, agents, representatives and Subcontractors have read and understand Owner's Conflicts of Interest Policy available at [Note: Insert University's web page where Policy is posted.] [Option (Include for UT System only.): <http://www.utsystem.edu/policy/policies/int160.html>], Owner's Standards of Conduct Guide available at [Note: Insert University's web page where Guide is posted.] [Option (Include for UT System only.): <http://www.utsystem.edu/systemcompliance/>], and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/ethics). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules.

**14.23 Disclosure of Interested Parties:** By signature hereon, Contractor certifies that, if the value of this agreement exceeds \$1 Million, it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by Contractor.

**14.24 Contractor Certification Regarding Boycotting Israel:** Pursuant to Chapter 2270, Texas Government Code, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Master Agreement. Contractor acknowledges this Master Agreement may be terminated and payment withheld if this certification is inaccurate.

**14.25 Contractor Certification Regarding Business with Certain Countries and Organizations:** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Master Agreement may be terminated and payment withheld if this certification is inaccurate.

**14.26 Domestic Iron and Steel Certification:** Pursuant to Sections 2252.201-2252.205 of the Texas Government Code, Contractor certifies that it will comply with the requirement that any iron or steel product produced through a manufacturing process and used in the Work for a Job Order will be produced in the United States.

**14.27 Responsibility for Individuals Performing Work; Criminal Background Checks:** Each Contractor Personnel who is assigned to perform Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all Contractor Personnel performing Work under this Agreement. Prior to any Contractor Personnel commencing Work, Contractor will have the following criminal background checks and screenings performed on the Contractor Personnel assigned: (1) Positive Identification Check– Social Security Number Trace, Maiden & Alias Name Search; (2) Criminal Record Search – County, Statewide and Nationwide Level (past 15 years); (3) Employment Verification (all previous employers for past 15 years); and (4) Sex Offender Registry Search. Contractor will be provided The University of Texas Police at Houston (the “UTP-H”) Security Sensitive Investigations Criminal Background Manual (the “Manual”). Contractor will maintain all documentation, including the results of any background checks, during the Term of this Agreement and will provide The University of Texas Police Department investigators copies of such documentation upon request. Contractor will determine on a case-by-case basis whether each Contractor Personnel assigned to perform Work is qualified to do so. Contractor will not assign any Contractor Personnel to perform Work under this Agreement who has a felony conviction or convictions of theft, embezzlement, fraud or property crime offenses of any grade, or a history of criminal conduct, or who does not otherwise comply with the Manual or MD Anderson’s Criminal and Personal Background Check Policy (ADM0312). Upon request, Contractor will provide MD Anderson a letter signed by an authorized officer of Contractor that certifies compliance with this Section. Contractor should send any questions regarding investigations to the UTP-H at [UTPD-SSR@mdanderson.org](mailto:UTPD-SSR@mdanderson.org). “Contractor Personnel” is any individual who is compensated by Contractor, or by a subcontractor engaged by Contractor, for providing a service directly to Owner, whether or not that individual is present on Owner’s premises. Contractor Personnel may include consultants, service vendor employees, construction workers, and temporary personnel needed for staff augmentation.

**14.28 Drug Testing Requirements:** Prior to commencing any Work under this Agreement, Contractor will ensure that all Contractor Personnel have tested negative on a five (5) panel drug test. The test must include the following: (a) Amphetamines, (b) Cocaine, (c) Opiates (2000 ng/ml), (d) PCP, and (e) THC.

## **ARTICLE 15                      NOTICES**

**15.01** All notices, consents, approvals, demands, requests or other binding communications under this Master Agreement shall be in writing. Such written notice may be delivered by hand, by facsimile

transmission (with confirmation of transmission), mailed by a nationally recognized overnight courier service (delivery receipt requested) with charges paid by the dispatching party or mailed by registered or certified mail, return receipt requested, to Contractor or to Owner, as the case may be, at the respective notice addresses identified in this Article. Notice so delivered will be deemed effective (A) upon hand delivery, (B) on the next business day following confirmation of facsimile transmission, (C) on the scheduled date of delivery by a nationally recognized overnight courier service, or (D) on the third (3<sup>rd</sup>) day following the date of deposit into the United States mail.

15.02 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: Ben Melson,  
Senior Vice President and Chief Financial Officer  
1515 Holcombe Blvd., Box 1495  
Houston, Texas 77030
- (b) With Copies to: James Waters  
Director, Facilities Project Contract and Control Services  
6900 Fannin, Suite FHB10.1000  
Houston Texas, 77030
- (c) If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### **EXHIBITS TO THIS MASTER AGREEMENT**

The following Exhibits are incorporated by reference for all purposes:

- Exhibit A Uniform General Conditions for University of Texas System Building Construction Contracts
- Exhibit B Owner's Division 00 and Division 01 Specifications
- Exhibit C Job Order Emergency Situation
- Exhibit D Request for Job Order Proposal Form
- Exhibit E Job Order Proposal Form
- Exhibit F Notice to Proceed Form
- Exhibit G Rider 104; Policy on Utilization of Historically Underutilized Businesses
- Exhibit H Contractor's Letter of HUB Commitment
- Exhibit I Rider 105; Contractor's Affirmations and Warranties
- Exhibit J Rider 106; Premises Rules
- Exhibit K Rider 107; Travel Policy
- Exhibit L Rider 116; Invoice Payment Requirements
- Exhibit M Rider 117; Institutional Policies
- Exhibit N Forms of Payment and Performance Bonds
- Exhibit O Contractor's Execution of Offer
- Exhibit P Contractor's Pricing and Delivery Proposal

BY SIGNING BELOW, Contractor has executed and bound itself to this Master Agreement upon the execution of this Master Agreement by both parties. No modification, alteration, amendment, or waiver of this Master Agreement or any of its provisions shall be effective unless in writing and signed by both parties. Changes in the terms and conditions under which the Contractor must perform the Work to be completed under this Master Agreement shall become effective only upon the execution of a written Amendment to this Master Agreement. Changes in the Work, the Job Order Price, or the Job Order Time shall become effective upon the execution of a Change Order, signed by duly authorized representatives of the parties. 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. Only duly authorized representatives of Owner's Supply Chain Management department are authorized to execute amendments to this Master Agreement and issue Purchase Orders, and any revisions thereto, to bind Owner for any payment to be made to Contractor pursuant to the terms of this Master Agreement.

[Contractor's Name]

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: \_\_\_\_\_