SAMPLE Agreement
Job Order Contracting (JOC) Agreement

This Agreement is made as of _______________ (the “Effective Date”),

By and between

The Owner: The University of Texas Medical Branch at Galveston (UTMB)
301 University Blvd.
Galveston, Texas 77555

and Contractor: JOC Contractor
Texas

Texas Tax Account No.: XX-XXXX

for the Project: Job Order Contracting (JOC) Services

Contract Number: P-20-xxxxx

UTUGC Version: 2013

Project Architect: Not Applicable

OCIP: No

This Agreement is for the provision of specified construction contracting services, to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement for UTMB campus in Galveston including offsite locations (Ref. Appendix 1 Building List). Contractor represents that he has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement and RFP 20-006.

Contractor and Owner agree as follows:
ARTICLE 1  TERM OF AGREEMENT

1.01 Initial Term: This initial term of Agreement(s) shall begin on “effective date” and shall expire two (2) years after that date unless renewed or terminated in accordance with the terms of the Agreement.

1.02 Renewal Option: Owner has the option to renew the term of Agreement(s) for three (3), one (1) 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: Work in progress may continue beyond the expiration date of this Agreement as necessary for the Contractor to complete work on any Project approved by Owner prior to the expiration of the Agreement. The terms of the Agreement shall automatically extend for the Project and shall remain in force throughout the duration of said continued work.

ARTICLE 2  AUTHORIZED CONTRACT SUM

2.01 Contract Sum for Primary JOC Contractor: The overall maximum value of this Agreement is Thirty Seven Million, Five Hundred Dollars ($37,500,000) spread out over the life of the contract. Total billings for authorized work performed by Contractor shall not exceed this maximum contract sum. The maximum contract sum shall not be increased except by written amendment to the Agreement, executed by Owner and Contractor and may be subject to the review and approval of the University of Texas System board of Regents.

2.02 Contract Sum for Secondary JOC Contractor: The overall maximum value of this Agreement is Two Million, Five Hundred Dollars ($2,500,000) spread out over the life of the contract. Total billings for authorized work performed by Contractor shall not exceed this maximum contract sum. The maximum contract sum shall not be increased except by written amendment to the Agreement, executed by Owner and Contractor and may be subject to the review and approval of the University of Texas System board of Regents.

The overall maximum value of the resulting Agreement will be This dollar value is based on forecasted volume of JOC work in the next five (5) years.

2.03 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 statement of the work and its cost.

2.04 Notwithstanding the foregoing, Owner shall have no obligation to issue Job Orders, if Contractor is in default or breach under the proposed Contract; the Texas Legislature fails to appropriate or allot the necessary funds, the Board of Regents of The University of Texas System fails to allocate the necessary funds; or Owner is prevented from so doing by reason of unusually inclement weather, strikes, labor disputes, fire, war and acts of war, riots and acts of the public enemy, acts of God, or any other reason reasonably beyond the control of Owner, regardless of whether such cause was reasonably anticipatable; or if Contractor fails, declines, or is unable to perform any of the work described by any Job Order or Statement of Work proposed by Owner during the term of the proposed Contract.

2.05 Contractor shall perform renovations/construction job orders in accordance with this Agreement using the RS Means Unit Price Guide, Statement of Work and/or drawings, while complying with the most current University of Texas Medical Branch-Galveston Master Specifications. Job Orders are anticipated to include, but not limited to, projects up to $300,000 in value as identified by the Owner. Owner reserves the right to utilize this Agreement for projects over $300,000.
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 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, or other documents, associated with any Job Order Project. The Project Architect and/or Owner Construction Manager for each Job Order Project shall be specified in the individual request for pricing. The Contractor shall do everything required by this Agreement, the Uniform General Conditions, any Additional General or Special Conditions of the Contract, the Addenda, the Specifications and Drawings for each Job Order Project and any other requirements incorporated into this agreement or a specific Job Order Project by reference.

Also, all work shall be performed in strict conformance with the specifications referenced in the University of Texas Medical Branch at Galveston’s Master Specifications, Exhibit A, (most current version) incorporated herein by reference and in accordance with best industry standards.

The Contractor selected shall perform construction, repair and/or remodel work at Owner’s facilities on an as needed basis per the scope of work defined on the Request for Pricing (RFP) (Ref. Appendix 2 Job Order Request for Pricing Form) for each project assigned to the Contractor by Owner.

3.02 Statement of Work/Project Scope: Statement of work is a description of a project and its to be ordered under a Job Order Contract which contains sufficient detail to determine quantities and quality, as well as time and performance for the required Work. The specific “scope of work/statement of work” for each job order project shall be determined in advance and in writing between the Owner and the Contractor.

3.03 Request for Pricing: The Owner shall prepare a Request for Pricing (Ref. Appendix 2 Job Order Request for Pricing Form), identifying the project and describing in drawings, specification and/or other appropriate materials the intended scope and character of the Project and the schedule for the Project. In response to a Request for Pricing, the Contractor shall provide Owner with a written Job Order Proposal within five (5) full working days from receipt of the Request for Pricing for each job order request submitted to Contractor. For Job Order Proposals with an anticipated cost over $85,000, the Owner shall determine whether subcontracting opportunities exist and require a HUB Subcontracting Plan (HSP) as part of the Job Order Proposal as required. When a HSP is required, Contractor will be allowed ten (10) full working days to submit a written Job Order Proposal to Owner with required HSP. Job order pricing per each request shall be quoted in a form compatible with RSMeans and coefficient rates as defined per this Agreement. In addition, the Job Order Proposal shall include the following:

a. A narrative description of Contractor’s understanding of the project scope of work;

b. A description of particular phases of the scope of the work, if applicable;

c. A Cost Proposal (prepared in accordance with Article 7, 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. any other costs that the Contactor intends to charge to the project;
   4. coefficient; and
   5. a lump sum figure for performing the work, if appropriate;

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. A HUB Subcontracting plan, if required;

g. Any qualifications or conditions applicable to the Job Order Proposal; and
h. Identify personnel who will be present at the job site during the progress of the work to supervise and oversee the work (Ref. Article 4 Contractor’s General Responsibilities, Item 4.02 Construction Superintendent).

i. Provide a list of current projects in which specified personnel are assigned, if none, so state.

3.04 **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 agreed to in the review process. The Owner may accept, reject or seek modification of any Job Order Proposal.

3.05 **Notice to Proceed:** Upon approval of a specific Job Order Proposal by the Owner, the Owner shall issue a written Notice to Proceed (Ref. Appendix 10 Notice to Proceed) or Purchase Order. The Notice to Proceed authorizes the Contractor to begin the work identified in the Project Proposal (the Work) on the date specified in the Notice. 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 Request.

3.06 **Field Order Authorization:** Contractor may be authorized to proceed with work via a Field Order Authorization as indicated on the Request for Pricing (Ref. Appendix 2 Job Order Request for Pricing Form). The Request for Pricing shall specify the not to exceed dollar amount for the work and said work shall in no event exceed $5,000 without written approval by UTMB. Said authorization shall be effective upon signature on by the UTMB Construction/Project Manager in the space indicated on the Request for Pricing. Contractor shall counter sign the Request for Pricing, thus agreeing to the requirements specified therein and shall provide pricing, upon completion of work, in accordance with Article 7 Cost Proposals of this Agreement. Submitted pricing shall be subject to UTMB review and approval prior to the issuance of a Purchase Order for payment.

3.07 **Request for Estimate:** Contractor may be requested to price work to be performed at a not to exceed estimate on Contractor’s letterhead for work where a written scope of work cannot be determined or for projects to be completed in a design/build manner. A Purchase Order and Notice to Proceed (Ref. Appendix 10 Notice to Proceed) will be issued for the mutually agreed not to exceed amount. As work is completed, or when work is finished, Contractor shall submit pricing in accordance with the cost proposal requirements of this Agreement (Ref. Article 7 Cost Proposals). Submitted pricing shall be subject to UTMB review and approval. The Purchase Order shall be adjusted via Change Request Proposal as cost proposal increases or deducts as cost proposal(s) are received and approved by UTMB.

3.08 **Emergency Work:** In the event of an Emergency, Contractor may be requested to perform work via written authorization. As work is completed, or when work is finished, Contractor shall submit pricing in accordance with the cost proposal requirements of this Agreement (Ref. Article 7 Cost Proposals). Submitted pricing shall be subject to UTMB review and approval prior to the issuance of a Purchase Order for payment.

Contractor shall respond within two (2) hours after notification of an Emergency call and shall report to work with the required craftsmen the next business day or as mutually agreed to by Owner and Contractor.

3.09 **Change Proposals:** In the event that modification to the scope of work of a Project is needed, after authorization to proceed on original scope has been given, Owner shall submit a Request for Pricing (Ref. Appendix 2 Job Order Request for Pricing Form) for a Change Proposal in accordance with the cost proposal requirements of the Agreement (Ref. Article 7 Cost Proposals).
The Owner and the Contractor shall review the Contractor’s Change Proposal and negotiate any additional changes, clarifications or modifications as required. The Owner may accept, reject or seek modification of any Change Proposal.

Upon approval of a specific Change Proposal by the owner, the Owner shall follow Owner’s procedure for a written Notice to Proceed (Ref. Appendix 10 Notice to Proceed) or Purchase Order Change Order. The Notice to Proceed shall authorize the Contractor to begin the work identified in the Change Proposal (the Work) on the date specified in the Notice. 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.

3.10 Project Close-Out: Upon completion of any project, Contractor shall comply with the requirements stated in Exhibit B Uniform General Conditions, Article 12 Project Completion and Acceptance and Article 13 Warranty and Guaranty. These requirements include, but are not limited to, cleaning and rubbish handling, as-built or record drawings, operations and maintenance manuals & training, warranties and guarantees, and certificates of occupancy when required.

ARTICLE 4 CONTRACTOR’S GENERAL RESPONSIBILITIES

4.01 Project Management: The Contractor shall manage the Work on any “Job Order / Project” 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.

4.02 Construction Superintendent: Contractor shall designate and maintain in effect throughout the contract period a Construction Superintendent (or Superintendents if in the opinion of the Owner the work load so requires) who shall be responsible for coordinating the work hereunder with Owner and shall have the authority to represent the Contractor in all matters relating to the contract and for resolving issues arising during the contract term.

Owner may request, at any time, the qualifications, experience and current projects for the Contractor’s Construction Superintendent assigned to a project. Upon review of said qualifications and current workload, Owner may request the replacement of or additional Construction Superintendent(s). Owner reserves the right to utilize another JOC Contractor in the event the Current Contractor is unable to provide a Construction Superintendent (or Superintendents) to Owner’s satisfaction.

Construction Superintendent(s) must have the ability to meet the following minimum criteria:
   a) Authority to represent Contractor,
   b) Attend / Conduct Project Meetings; and
   c) Three (3) years experience as Construction Superintendent in the construction field.

4.03 Project Safety Coordinator: Contractor shall designate and maintain in effect throughout the contract period a full-time Project Safety Coordinator(s) who shall be responsible for monitoring construction sites and enforcing compliance with government regulations, acts, standards, as well as, the requirements specified in the UTMB Master Specification 01 35 23 Project Safety Requirements. Contractor’s Project Safety Coordinator(s) shall have the authority to represent the Contractor in all safety matters relating to the Contract and for resolving issues arising during the contract term.

Owner may request, at any time, the qualifications and experience for the Contractor’s Project Safety Coordinator(s). Upon review of said qualifications and in the event qualifications do not meet UTMB’s minimum requirements, Owner may request the replacement of Contractor’s Project Safety Coordinator(s). Owner reserves the right to utilize another JOC Contractor in the event the current Contractor is unable to provide a Project Safety Coordinator to Owner’s satisfaction.
Project Safety Coordinator(s) must have the ability to meet the following minimum criteria:

a) Authority to represent Contractor,
b) Ability to meet the requirements of UTMB Master Specification 01 35 23 Project Safety Requirements; and

c) Bachelor’s degree in related field or three (3) years related experience.

4.04 Staffing: Contractor shall maintain a staff of properly trained and experience personnel and/or subcontractors to insure satisfactory and timely performance.

4.05 Security Check Requirements: Contractor shall perform a Security Clearance Check for each of “Contractor’s” employees, agents and/or subcontractor's personnel performing work on Owner’s premises. The type and scope of the Security Clearance Check shall be subject to the location of work in accordance with Owner’s Security Requirements.

4.06 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 Project 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.

4.07 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.

4.08 Existing Conditions: Contractor shall diligently 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 Project.

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

4.10 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 Project and the Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

4.11 Documentation: The Contractor shall fully document its Project activities, in drawings, reports or other methods as appropriate to the statement of work and as identified in the Job Order Proposal. Further, Contractor shall provide before and after photographs of all underground work, or as requested by Owner. (Ref. Master Spec 01 78 39, Project Record Documents).

In addition, Contractor shall provide to Owner monthly reports outlining its Project activities. Said report shall, at a minimum, include the following information:

a) Owner Project Name and project number
b) Corresponding JOC Number
c) Owner Purchase Order Number
d) Name of Contractor’s Construction Superintendent
e) Status of Project / Request for Pricing
f) Date Request for Pricing received by Contractor
g) Date priced and project proposal amount
4.12 **Time of Performance:** Time is of the essence in the rendering of services hereunder. Contractor agrees to perform all obligations and render services set forth per this Contract in accordance with the schedules herein and as mutually agreed upon between Owner and Contractor during the term of this Contract.

4.12.1 **NORMAL HOURS**
All work required hereunder shall be performed during normal business hours (6:00 a.m. to 6:00 p.m.; Monday through Friday, excluding approved holidays.)

4.12.2 **NON-NORMAL HOURS AS DIRECTED BY OWNER**
Non-normal working hours are defined as hours worked between 6:01 pm to 5:59 am Monday – Friday; Weekends (Friday, 6:01 pm to 5:59 am Monday) and approved Holidays.

4.12.3 The hours specified in parenthesis represent the window of time that is considered to be Normal and Non-Normal Working Hours; however, Contractors are not **expected to work more than forty (40) hours a week unless otherwise specified per Job Order**. Contractor shall charge the appropriate coefficient to Owner for work performed during these time frames.

4.12.4 Approved Holidays shall be defined as Holidays proposed by the Contractor and mutually agreed to by and between Contractor and Owner upon execution of Agreement (Ref. Appendix 8 Approved Holidays).

4.13 **Quality Improvements:** The Contractor selected agrees to assist Owner’s Capital Projects Teams concerning construction service delivery to our institutional customers by attending project meetings and by performing constructability studies and providing cost effective recommendations.

4.14 **Insurance:** Contractor shall carry and will cause its subcontractors to care, at least the insurance specified in Exhibit B, Uniform General Conditions, Article 5 Bonds and Insurance and Exhibit C Owner’s Special Conditions, Item 1.8.4.

4.15 **Bonding:** Contractor shall provide evidence satisfactory to Owner of bonding capacity in accordance with Exhibit B, Uniform General Conditions, Article 5 Bonds and Insurance and Exhibit C Owner’s Special Conditions, Item 1.8.4.

4.16 **Temporary Structures:** As a part of each proposal Contractor will provide to Owner a written plan/diagram depicting how the Contractor will layout the job. This plan may include requests from the Owner for use of the Owner’s space, including but not limited to, exits, corridors elevators, and temporary administrative space. Temporary buildings (e.g., storage sheds, shops, offices, trailers) and utilities may be erected by Contractor for certain Projects with the prior approval of Owner. Said temporary buildings shall be built with labor and materials furnished by Contractor without expense to Owner. The temporary buildings shall remain the property of the Contractor and shall be removed by Contractor at its expense upon the completion of the Project.
ARTICLE 5  THE OWNER'S RESPONSIBILITIES

5.01  Request for Pricing: The Owner shall provide a Request for Pricing (RFP) (Appendix 2, Job Order RFP) setting forth the Owner’s description of the project statement of work and/or drawings, specifications and other appropriate documents, schedule, objectives, characteristics and constraints, and a description of the basic services to be provided by the Contractor for the Project.

5.02  Contract Manager: Owner shall designate a Contract Manager who shall be responsible for the overall coordination and management of the job order program. The Contract Manager shall be responsible for designating an Owner Representative for each Job Order assigned to Contractor.

All project requests and work performed hereunder shall be subject to the review and approval of the Contract Manager or his designee. The Owner designates the Contract Manager or his designee as its representative for the purpose of administering this contract and as its representative in any dispute resolution procedures. The Contract Manager shall decide all questions pertaining to the Contractor’s performance and its fulfillment of the Contractor’s obligations hereunder.

5.03  Owner Representative: The Owner designates Representative(s) to act in the Owner's behalf with respect to each Project. The Owner Representative(s) shall be responsible for coordinating scheduling and managing each job order and shall be the primary contact point for Contractor relating to job order specific issues.

5.04  Identification Badges: Contractor employees and their subcontractors are subject to a minimum of level 2 security clearance or as may be appropriate for job. Owner shall provide all photo identification badges. Contractor employees are required to wear badges at all times while on Owner premises. All costs related to badging shall be at Contractor’s expense.

5.05  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 project. Owner shall furnish other special investigations of the Project site as requested by the Contractor and as reasonably necessary for the Project. 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.

5.06  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.

5.07  Administrative Services: The Owner shall furnish all legal, accounting, auditing and insurance counseling services that Owner requires for the Project.

5.08  Review of Work: The Owner will review the Work in progress on a weekly or biweekly basis as defined by the Owner Representative. 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 contract documents that the Owner becomes aware of, but Contractor shall have the duty to investigate whether such faults, defects, or conflicts actually exist.

5.09  Time for Response: The Owner shall use its best efforts to respond and furnish required information and services after receiving request for information by the Contractor. Owner will provide timely review of shop drawings, within two (2) weeks of receipt. In the event the Owner can not respond within this time frame, Contractor will be notified as to when a response can be expected.
ARTICLE 6  ACCEPTANCE OF WORK

6.01 Owner’s Satisfaction: All work performed under this Agreement shall be completed to the satisfaction of the Owner’s representative assigned to the project. The Owner’s representative shall decide all questions regarding Contractor’s performance under the Agreement and such decision shall be final and conclusive. Owner will monitor and determine Contractor’s performance after each project using Appendix 7, Job Order Contracting (JOC) Performance Evaluation.

Owner reserves the right to utilize Secondary JOC Contractor at its sole discretion.

6.02 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 as specified in Exhibit B, Uniform General Conditions.

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  COST PROPOSALS

7.01 General: The price for a job or project ordered by the Owner under this proposed Contract shall be based on the most current issue of the RS Means Unit Price Guide Bare Cost, the Contractor’s Coefficient, and any non-pre-priced items.

The Owner shall have the unconditional right to withdraw its Job Order at any time before or after the Contractor has submitted its proposal for a Job Order. For a Job Order or project under this proposed Contract to become effective, the following conditions must be met:

(a) Contractor shall receive a Request for Pricing by Owner,
(b) Contractor shall issue to Owner a Job Order Proposal. Proposal may be negotiated between owner and the contractor.
(c) Contractor must provide a project work schedule (or critical path method) to Owner, in accordance with Exhibit B, Uniform General Conditions, Article 9 Construction Schedules and as may be required for project, within ten (10) days of Notice to Proceed, if applicable to the project.

7.02 Required for Each Project: Contractor shall prepare a cost proposal for each Job Order Proposal 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 Work for a Project.

7.03 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 Project should be based substantially on the use of pre-priced items.

7.04 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, straight-time labor and equipment cost, but not indirect costs or profit. The Unit Price Guide for this Agreement is:

RSMeans Facilities Construction Cost Data, Current Edition, Bare Cost
RSMeans Facilities Maintenance and Repair Data Book, Current Edition, Bare Cost
which is hereby incorporated by reference. The Unit Price Guide in effect will be updated to the current edition (i.e., 2018, 2019, etc.) in January of each year corresponding to publication.

Proposals for job orders shall remain firm during a calendar year January thru December. Further, any PO for proposal issued within that same calendar year shall remain firm for the duration of the project. Contractor may re-price any proposal where a PO was not issued within the same calendar year.

7.05 The **Coefficient Multiplier (Contractor’s Coefficient)** is a numerical factor which represents costs not considered as included in Unit Price Guide unit prices, as described in Appendix 3 Pricing Information and Methodology. The Coefficient Multipliers for this Agreement are:

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<tr>
<th>Primary Award</th>
<th>Initial Term</th>
<th>Renewal 1</th>
<th>Renewal 2</th>
<th>Renewal 3</th>
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<tr>
<td>Coefficient Normal Working Hours (6:00am to 6:00pm Monday – Friday); Excluding approved Holidays, as defined in Article 4 of Attachment No.3, Sample Job Order Contracting (JOC) Services Agreement.</td>
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<td>Coefficient Non-normal Working Hours* (6:01pm to 5:59am Monday – Friday); Weekends (Friday, 6:01pm to Monday, 5:59am) and approved Holidays], as defined in Article 4 of Attachment 3, Sample Job Order Contracting (JOC) Services Agreement.</td>
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*The coefficient proposed for non-normal working hours will only be applied to labor.*

7.06 **Non-Pre-priced Items:** Non-Pre-Priced items shall be priced in accordance with Appendix 3 Pricing Information and Methodology.

7.07 **Other Costs:** Extraordinary costs that are unique to a specific Project and not generally or reasonably included in the coefficient multiplier may be added, as non-pre-priced items, only if authorized or confirmed in writing by the Owner. Such extraordinary costs may be calculated as a lump sum for the Project or on a “Not to Exceed” basis.

ARTICLE 8  PAYMENT

8.01 The Owner shall pay the Contractor for Work performed on Projects authorized by the Owner in writing in a Notice to Proceed and subsequent Purchase Order, subject to allowable additions and deductions.

8.02 Contractor may submit progress payment requests for work performed hereunder at monthly intervals. Requests must reference the Purchase Order, Job Order(s), and Owner Project Number being billed and be in accordance with the Exhibit B Uniform General Conditions, Article 10 Payments and Exhibit C Owner’s Special Conditions, Item 1.8.7.

ARTICLE 9  DISPUTE RESOLUTION
Government Code Chapter 2260 Controls: Contractor’s claims for breach of this Agreement that are not resolved informally are governed by Texas Government Code, Chapter 2260, as it may be amended from time to time, unless preempted by other applicable law. The submission, processing and resolution of Contractor’s claims are governed by rules adopted by the Texas Attorney General at 1 Tex. Admin. Code, Chapter 68, as currently effective or subsequently amended.

ARTICLE 10  HISTORICALLY UNDERUTILIZED BUSINESSES

The Owner has adopted a Policy on Utilization of Historically Underutilized Business ("Policy") [Ref. Exhibit B Uniform General Conditions, Article 4 Historically Underutilized Business (HUB) Subcontracting Plan, and Exhibit H Policy on Utilization of Historical Underutilized Business (HUB)]. Contractor, as a material provision of the Agreement, must comply with the requirements of the Policy and adhere to any Letter of HUB Commitment, Self-Performing HUB Plan or HUB Subcontracting Plan submitted with Contractor’s Proposal. No changes to the Letter of HUB Commitment, Self-Performing HUB Plan or HUB Subcontracting Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

ARTICLE 11  LIQUIDATED DAMAGES

11.01 Contractor agrees to perform all work in accordance with the schedules for work completion defined within each job order. Failure to complete the work per the agreed upon schedule shall give Owner the right, in addition to any other rights provided under this agreement to assess liquidated damages, cancel the job order and acquire such work from the best available sources and charging the Contractor the difference between the contract price and actual purchase price, if any, plus cost of handling. Notwithstanding the foregoing, Owner shall have no obligation to accept late performance or to waive timely performances by Contractor.

11.02 The Request for Pricing (Ref. Appendix 2 Job Order Request for Pricing Form) for each Project authorized by the Owner will include an amount that will be deducted from the Project Cost for each consecutive calendar day after the completion date established by the Notice to Proceed or Purchase Order that any Work, including the correction of deficiencies found during the final testing and inspection, is not completed. The amount specified for a particular Project will be deducted not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages which the Owner will sustain for late completion.

ARTICLE 12  CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

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

12.02 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.

12.03 At Substantial Completion and Final Completion the Contractor shall provide a certification letter certifying that the Work does not contain asbestos as required by Exhibit B – 2013 Uniform General Conditions, Article 16.
ARTICLE 13  CONTRACTOR’S SPECIAL WARRANTIES AND RESPONSIBILITIES

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

13.8 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.

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

13.10 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.

13.11 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 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. Contractor is responsible for all income taxes required by applicable law.

14.02 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.

14.03 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.

14.04 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 is considered consent under this Article. Contractor may not change subcontractors without the prior written consent of Owner.

14.05 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.

14.06 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.

14.07 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.

14.08 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.

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 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:** 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.

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

14.12 **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.

14.13 **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.

14.14 **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.

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 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 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 Galveston County, Texas.

14.17 **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.

14.18 **Agreement Amendments:** This Agreement may be amended within the Agreement period by mutual consent of the parties. No modification or amendment to this Agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to this Agreement must be forwarded to Owner for prior review and approval.

14.19 **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.

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 Agreement; and (4) the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
14.21 **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.

14.22 **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.

14.23 **Suspension and Termination:** Suspension/Termination of this Agreement shall be in accordance with Exhibit B Uniform General Conditions, Article 14 Suspension and Termination.

**ARTICLE 15  NOTICES**

15.01 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may be 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.

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:  

   Attn.: Chuck S. Anderson  
   Program Director of Construction  
   The University of Texas Medical Branch at Galveston  
   BOF Design and Construction  
   301 University Blvd.  
   Galveston, TX 77555-1116  
   Tel.: (409) 772-3500  
   Fax: (409) 772-5199

(b) With Copies to:  

   Attn.: Director of Purchasing  
   The University of Texas Medical Branch at Galveston  
   BOF – Supply Chain, Purchasing  
   301 University Blvd  
   Galveston, TX 77555-1116

(c) If to Contractor:  

   Attn: xxxxx,  
   Title  
   Address  
   City, State  Zip  
   Tel.: (000) 000-0000

***THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK***
IN WITNESS WHEREOF, Owner and Contractor have executed and delivered this Agreement effective as of the date identified above.

CONTRACTOR:
Company Name
Address

(By: )
Name: 
Title: Corporate Secretary

(By: )
Name: 
Title: President and CEO

OWNER:
The UNIVERSITY OF TEXAS
MEDICAL BRANCH at GALVESTON

(By: )
Name: 
Title: Vice President, Business Operations and Facilities

ATTACHMENTS
The Following Exhibits and Appendices are incorporated and made a part of this Agreement for all purposes:

Exhibit A UTMB Master Specifications (incorporated herein by reference)
Exhibit B 2013 Uniform General Conditions
Exhibit C Special Conditions
Appendix A Prevailing Wage Guidelines
Appendix B Worker Classification Definition Sheet
Appendix C Weather Data
Exhibit D Performance Bond
Exhibit E Payment Bond
Exhibit F Policy on Utilization of Historical Underutilized Business (HUB)
Exhibit G Certification of Franchise Tax Payment
Appendix 1 UTMB Building List (Healthcare / Academic, Research and Business)
Appendix 2 Job Order Request for Pricing Form
Appendix 3 Pricing Information and Methodology
Appendix 4 RFP/Change Proposal Approval Form
Appendix 5 Non-Pre-Priced Items: General Contractor
Appendix 6 Non-Pre-Priced Items: Sub-Contractor
Appendix 7 Job Order Contracting (JOC) Performance Evaluation
Appendix 8 Approved Holidays
Appendix 9 Contractor’s Letter of HUB Commitment & Self-Performing HUB Plan
Appendix 10 Notice to Proceed