TEXAS
Health and Human Services

Exhibit C

Draft General Construction Services Contract

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Health and Human Services

General Construction Services Contract

<Abbreviated Contractor's Name>

Project Name

<Abbreviated Project Name>

Project Delivery Method

General Contractor for <Construction, Rehabilitation, Alteration, or Repair>

DRAFT

Texas Health and Human Services
General Construction Services Contract

1. Purpose

The Health and Human Services Commission ("**HHSC**" or "**Owner**"), an administrative agency within the executive branch of the state of Texas, and <Full Legal Name of Contractor including any "dba"> ("**Contractor**"), each a "**Party**" and collectively the "**Parties**," enter into the following <Construction, Rehabilitation, Alteration, or Repair> Services Contract (the "**Contract**") for the <Title or Description of Project> at the <Name of Facility> (the "**Project**"). The term "**Contract**" shall include all attachments set forth below, all terms of such attachments being incorporated herein. The definitions in Attachment B (Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions "**UGCs**) apply to the same terms used in this document, including, but not limited to, "**Contract Documents**," "**Contract Time**," "**Substantial Completion**," and "**Work**."

2. Legal Authority

This Contract is authorized by, and in compliance with, relevant provisions of the *Texas Government Code*, including, but not limited to, Chapters 531 and 2269, and all rules and regulations promulgated thereunder.

3. Duration

3.1 The Contract is effective upon the signature date of the latter of the Parties to sign (the "**Effective Date**"), and will terminate upon completion of the Project as described in **Section 4**, unless extended or terminated pursuant to the terms and conditions of this Contract. The term of this Contract cannot extend past **August 31, <Year>**. At the sole option of Owner, this Contract may also be extended beyond the original term as necessary to complete the mission of the solicitation or as otherwise determined by Owner to serve the best interests of the state of Texas.

3.2 The Date of Commencement of the Work shall be fixed in a Notice to Proceed issued by the Owner. The Contract Time shall be measured from the Date of Commencement. The Contractor shall achieve Substantial Completion of the entire Work not later than **<Insert number of days>** from the Date of Commencement.

4. Scope of Work

Contractor has overall responsibility for and shall provide and furnish all materials, equipment, tools, and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in a good and workmanlike manner, in accordance with Owner's requirements as more fully described in the Contract Documents**.**

5. The Contract Sum

5.1 The Owner shall pay the sum of **$<Insert Amount>** to the Contractor for performance of the Contract, including the Base Proposal and all Alternate Proposals (if any) accepted by

the Owner and described in the Contract Documents. All Payments shall be made as provided in the UGCs.

5.2 The Owner-controlled contingency of **$<Insert Dollar Amount>**, which sum shall be maintained through construction and shall be included in the Contract Sum, but Contractor shall not use such funds unless and until Owner elects to use, apply, or otherwise credit such funds to pay for a change in the Work as a Cost of Work that is not the responsibility of Contractor, or is not due to the fault or negligence of Contractor, and which change has been approved by the Owner by Change Order or directed by the Owner in a Unilateral Change Order. The Owner-controlled contingency is in the Contract Sum referenced in **Section 5.1**. Any unused portion of the Contractor's Contingency (if applicable) and the Owner-controlled contingency shall be returned to the Owner at the completion of the Project through a credit Change Order to the Contract Sum.

5.3 If, at any time during the term of this Contract, Contractor reduces the comparable price of any article, material, equipment or service covered by the Contract to customers other than Owner, the prices charged to Owner for such articles, materials, equipment, or services shall also be reduced proportionately. Such reduction shall be effective at the same time and in the same manner as the reduction in price to customers other than Owner. In addition to invoicing at the reduced prices, Contractor shall furnish promptly to Owner complete information regarding the reduction.

6. No Felony Criminal Convictions; Background Checks

6.1 Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representatives of such subcontractors, have been convicted of a felony criminal offense, or that if such a conviction has occurred, Contractor has fully advised Owner in writing as to the facts and circumstances surrounding the conviction and received Owner's written permission before allowing the employee, agent, representative, or subcontractor on state-owned property.

6.2 At the sole option of the Owner, the Contractor may be required to complete a criminal background check on the Contractor's personnel (to include Contractor's officers, agents, employees, representatives, and/or contractors) who will perform Work on state-owned property. If required for this Project, the criminal background check requirements will be set forth in **Attachment C**.

7. Miscellaneous Provisions

7.1 **Proprietary Interests.** All information owned, possessed, or used by Owner which is communicated to, learned, developed, or otherwise acquired by Contractor in the performance of services for Owner, which is not generally known to the public, will be confidential. Contractor will not, beginning on the date of first association or communication between Owner and Contractor and continuing through the term of this Contract and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent Contractor of Owner in

connection with the Project, or release any information relative to the Project for publications, advertisement, or any other purpose without the prior written approval of Owner. Contractor will obtain assurances similar to those contained in this Subsection from persons, vendors, and consultants retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause Owner irreparable injury and damage. Therefore, Contractor expressly agrees that Owner will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Contract.

7.2 **Independent Contractor.** Contractor understands and acknowledges that Contractor and Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Contractor nor Owner is an agent of the other and neither may make any commitments on the other party's behalf. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Owner is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract. Contractor shall have no claim against Owner for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and Owner.

7.3 **Waivers.** No delay, omission, or partial exercise by either of the Parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other Party hereto of any of the provisions of this Contract will limit, impair, preclude, or cancel any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements hereof to be performed by the other Party hereto will not be construed to be a waiver of any continuing or subsequent breach thereof or of any other covenant, condition, or agreement herein contained. A payment, act, or omission in any manner will not impair or prejudice any right, power, privilege, or remedy available to Owner to enforce its rights, powers, privileges, and remedies as they are specifically preserved. No waiver by Owner is valid unless authorized by Owner's Executive Commissioner or his/her designee in writing.

7.4 **Assignment.** Contractor may not assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of the Agency, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

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

7.6 **Records Retention.** All records relevant to this Contract (including solicitation and solicitation response documents related to the Contract) shall be maintained and retained by Contractor for a minimum of seven years to ensure, among other things, that claims for

Contract funds are in accordance with applicable state of Texas requirements. This seven-year retention period commences from the later of the date that the (i) Contract is completed, expired, or terminated or (ii) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the Contract or documents are resolved.

7.7 **Limitation on Authority and No Other Obligations.** Contractor shall have no authority to act for or on behalf of Owner or the state of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. Owner hereby expressly reserves the right from time to time to designate by written notice to Contractor to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of Owner or the state of Texas.

7.8 **Contract Representatives.** The following will act as the designated Representative authorized to administer activities including, but not limited to, notices, consents, approvals, requests, or other general communications provided for or permitted under this Contract. The Contractor's designated representative may be referred to as its "**Project Manager**," and the Owner's designated representative may be referred to as its "**ODR**." The designated Project Manager and ODR are as follows:

Project Manger
<Representative's Full Name>
<Address>
<Telephone Number>
<Fax Number>
<Email Address>

ODR
<Project Manager's Full Name>, CTCM
909 West 45th Street; Mail Code: 2064
Austin, Texas 78751
<Telephone Number>
<Email Address>

With copy to:
Renu Razdan, AIA, LEED AP, BD+C
Director, Maintenance and Construction Dept.
909 West 45th Street; Mail Code: 2064
Austin, Texas 78751
(512) 206-4692
renu.razdan@hhsc.state.tx.us

Either Party may change its designated representative by providing written notice to the other Party.

7.9 **Legal Notices.** All legal notices shall be in writing, and, except as otherwise specifically provided in this Contract, shall be deemed given (i) if hand delivered or delivered by courier, when delivered to the appropriate notice address as evidenced by a signature acknowledging receipt, or (ii) if mailed by first class mail, postage prepaid to the appropriate notice address, return receipt requested, on the date indicated received on the return receipt. The Parties listed below may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent. Any legal notice required or permitted hereunder shall be directed to the following notice address:

Contractor **Owner**

<Full Legal Name of Contractor including dba>
Attn: <Representative's Full Name>
<Address>
<City, State, Zip Code>

Health and Human Services Commission
Attn: Office of Chief Counsel
4900 N. Lamar Blvd.; Mail Code 1100
Austin, Texas 78751

with copy to:
Health and Human Services Commission
Attn: <Project Manager's Full Name>
<Address>
<City, State, Zip Code>

7.10 **Severability.** If any provision of this Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from this Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

7.11 **Survivability.** Expiration or Termination of this Contract for any reason does not release Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of this Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

7.12 **Captions.** The captions of sections in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

7.13 **Counterparts.** This Contract may be executed in multiple counterparts, each of which shall be deemed, construed and considered to be an original, but all of which shall constitute one and the same instrument. The Parties each agree that this transaction and Contract may be conducted under the Texas Uniform Electronic Transactions Act ("**UETA**"), and in particular, the Parties each consent to an electronic signature (as defined in Texas UETA) as an enforceable signature for this Contract and any amendment thereto.

7.14 **Extent of Contract.** This Contract supersedes all prior agreements concerning this Project, written or oral, between Contractor and Owner, with the exceptions of those prior agreements, acknowledgements, affirmations, representations, and warranties that have been expressly incorporated into this Contract. This Contract, which, as defined, includes the Contract Documents, shall constitute the entire contract and understanding between the Parties with respect to the subject matter hereof. This Contract, which includes the Contract Documents and each of their provisions, shall be binding upon the Parties and may not be waived, modified, amended or altered except by a writing signed by Owner and Contractor.

7.15 **Entire Contract.** This Contract, which includes the Contract Documents, is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by Owner.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Contract as of the Effective Date.

Health and Human Services Commission	**<Full Legal Name of Contractor>**
By:_____	By:_____
Mike Maples Deputy Executive Commissioner for Health and Specialty Care Systems	Name:_____
	Title:_____
Date of execution:_____	Date of execution:_____

As stated above, the following Attachments to this Contract are hereby attached and incorporated herein by reference:

Attachment A - Contract Affirmations for State Architectural/Engineering and Construction Projects (Version 1.2)
Attachment B - Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions (Version 2.2)
Attachment C - Project Special Conditions
Attachment D - Facility Specific Policies and Procedures
Attachment E - Prevailing Wage Rates
Attachment F - Respondent's/Contractor's Signed Pricing Proposal Form
Attachment G - Respondent's/Contractor's Historically Underutilized Businesses Subcontracting Plan *(if applicable)*
Attachment H - <Project Drawings and Specifications <or> Project Scope of Work> and <including any addenda thereto>
Attachment I - Negotiated Modifications to the Proposal