

DRAFT AGREEMENT  
PROJECT MANAGEMENT SERVICES  
for  
PROJECTS OF INDEFINITE SCOPE / INDEFINITE QUANTITY

**MD Anderson Agreement No.** \_\_\_\_\_

This Agreement is made as of \_\_\_\_\_, 2012 (the “Effective Date”), by and between:

The Owner:               The University of Texas M. D. Anderson Cancer Center  
6900 Fannin, Suite 1010  
Houston, Texas 77030

and

The Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Agreement is for the provision of project management services, to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement. Service Provider represents that they have the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

The Owner and the Service Provider agree as follows:

ARTICLE 1  
TERM OF AGREEMENT

**1.01 Initial Term:** This initial term of this Agreement shall begin on the effective date and shall expire twenty-four (24) months after that date unless renewed or terminated in accordance with the terms of the Agreement.

**1.02 Renewal Option:** The Owner has the option to renew the term of this Agreement for one (1) successive thirty-six (36) month period upon written notice to the Service Provider at least sixty (60) days prior to the expiration of the initial or any subsequent term.

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

## ARTICLE 2 MAXIMUM AUTHORIZED CONTRACT SUM

2.01 **Maximum Contract Sum:** The overall maximum of this contract is indefinite, subject to the contractual authority delegated by the Board of Regents to the Owner's representative. Allowable fees for each specifically authorized project will be established in a Purchase Order issued by the Owner. Invoices for authorized work performed by the Service Provider shall not exceed the fees established for any portion of authorized work. Established fee amounts shall not be increased except by written amendment executed by Owner to a previously issued Purchase Order.

2.02 **No Minimum Amount of Work:** Owner makes no representations regarding the amount or type of services, if any, that Service Provider will be asked to provide to Owner during the term(s) of this Agreement. It is expressly understood that the Owner is under no obligation to request any services from Service Provider and no minimum amount of work is required or contemplated under this Agreement. All service requests will be made by the Owner on an as-needed basis, subject to future agreement on the scope of the work and the fee.

2.03 **Non-exclusive Agreement:** Owner reserves the right, and at Owner's sole discretion, may obtain similar services from other sources during the term of this Agreement without invalidating in whole or in part this Agreement, or waiving any rights or remedies Owner may have hereunder, including all extensions of this Agreement.

2.04 **Board of Regents Authorization.** Under no circumstances shall the total amount owed to the Service Provider for services rendered under this Agreement exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in the aggregate until and unless this Agreement is approved by the U.T. System Board of Regents.

## ARTICLE 3 SCOPE OF SERVICES

3.01 **In General:** The Service Provider agrees to provide project management services on a per-project basis as requested by the Owner in accordance with the terms of this Agreement. The actual scope of services solicited under an individual Request for Proposal will vary from project to project according to specific project requirements. In general, the anticipated scope of services for specific Purchase Orders may include, but are not necessarily limited to, those services described in **Exhibit E – Scope of Services**.

3.02 **Project Scope:** The specific scope of work for each project shall be determined in advance and in writing between the Owner and the Service Provider.

3.03 **Project RFP:** The Owner will prepare a Project Request for Proposal ("Project RFP") identifying the project and describing, in general, the intended scope and character of the

project, the preliminary cost estimate and schedule for the project, and the basic services to be provided by the Service Provider for the project.

**3.04 Project Proposal:** In response to a Project RFP, the Service Provider shall provide Owner with a written Project Proposal. The Project Proposal shall include the following:

- a. A narrative description of Service Provider's understanding of the project scope of work;
- b. A detailed statement of the basic and additional services anticipated for the project, including a list of deliverables;
- c. A description of particular phases of the scope of the work, if applicable;
- d. A Fee Proposal detailing:
  1. the total fee for providing the basic services expressed as a "Not to Exceed" amount;
  2. the total fee for providing additional services expressed as a "Not to Exceed" amount; and
  3. the total anticipated amount for reimbursable expenses;
- e. A proposed date to commence the work;
- f. A list of all consultants, persons and firms that Service Provider proposes to use in the performance of Service Provider's scope of work;
- g. A schedule of hourly billing rates for any consultants that Service Provider proposes to use in the performance of Service Provider's scope of work;
- h. A HUB Subcontracting plan, if required;
- i. Any qualifications or conditions applicable to the Project Proposal; and
- j. A summary statement of the amount of all previous proposals entered into under this Agreement to date.

**3.05 Project Proposal Review:** The Owner and the Service Provider shall review Service Provider's Project Proposal and negotiate any changes, clarifications or modifications thereto. The Service Provider shall submit a revised Project Proposal incorporating any changes, clarifications or modifications made in the review process. The Owner may accept, reject or seek modification of any Project Proposal.

**3.06 Notice to Proceed:** Upon approval of a Project Proposal by the Owner, the Owner shall issue a written Notice to Proceed. The Notice to Proceed authorizes the Service Provider to begin the work identified in the Project Proposal on the date specified in the Notice. The Notice to Proceed shall include a Purchase Order number specific to the project.

## ARTICLE 4 SERVICE PROVIDER'S GENERAL SERVICES AND RESPONSIBILITIES

**4.01 Project Management:** The Service Provider shall manage the Service Provider's services and administer any project authorized pursuant to this Agreement. The Service Provider

shall provide and/or coordinate the basic services necessary and reasonably inferable for the complete performance of any project authorized pursuant to this Agreement.

**4.02 Standard of Care:** Service Provider agrees to use its best professional efforts, skill, judgment, and abilities to perform Service Provider's services in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any project authorized pursuant to this Agreement. Service Provider shall at all times provide a sufficient number of qualified personnel to accomplish Service Provider's services within the time limits set forth in the schedule.

**4.03 Compliance with Laws:** Service Provider shall endeavor to perform Service Provider's services 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.

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

**4.05 Correction of Work:** Service Provider's services shall be reasonably accurate and free from material errors or omissions. Upon notice, Service Provider shall promptly correct any known or discovered error, omission, or other defect without any additional cost or expense to Owner.

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

**4.07 Representative:** Service Provider shall designate a representative primarily responsible for Service Provider's services under this Agreement. The designated representative shall act on behalf of Service Provider with respect to all phases of Service Provider's services 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.

**4.08 Documentation:** The Service Provider shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Project Proposal. The Service Provider shall bear the cost of providing all plans, specifications and other documents used by the Service Provider and its consultants.

## ARTICLE 5 THE OWNER'S RESPONSIBILITIES

5.01 **Project Program:** The Owner shall provide a Project RFP setting forth the Owner's description of the project scope; preliminary project budget; schedule; objectives, characteristics and constraints; and a description of the basic services to be provided by the Service Provider for the project.

5.02 **Representative:** The Owner designates Paul Kuester, Director of Operations, Capital Planning and Management, as its representative authorized to act in the Owner's behalf with respect to the Project. The Owner designates Susan Lipka, Associate Vice President, Capital Planning and Asset Management, as its representative for the purpose of administering this contract.

5.03 **Special Information:** The Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to the project. Owner shall furnish other special investigations of the Project site as requested by the Service Provider and as reasonably necessary for the Project. Service Provider 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 Service Provider by the Owner or by others.

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

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

5.06 **Review of Work:** The Owner will review the Service Provider's documents at the completion of each stage of development as described in the Project Proposal. Owner's review comments or decisions regarding the documents will be furnished to the Service Provider in a reasonably prompt manner. The Owner will notify the Service Provider in writing of any material error or omission or other defect in the project or any conflict in the contract documents that the Owner becomes aware of, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

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

## 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 Service Provider's performance under the Agreement and such decisions shall be final and conclusive.

6.02 **Correction of Work:** Should Service Provider's services not conform to the requirements of this Agreement and the Project Proposal as determined by the Owner's representative, Owner may order the Service Provider to re-perform such services at no additional expense to the Owner or deduct the fees for such services from any other fees payable to the Service Provider.

6.03 **Liability:** Owner's approval or acceptance of Service Provider's services will not release Service Provider from any liability for such services because Owner is, at all times, relying upon Service Provider's skill and knowledge in performing Service Provider's services.

## ARTICLE 7 COMPENSATION FOR SERVICES RENDERED

7.01 **Owner's Approval Required:** Owner agrees to pay Service Provider for those services rendered at Owner's specific request, in advance and in writing.

7.02 **Scheduled Billing Rates:** Attached as **Exhibit A**, and incorporated herein, is Service Provider's Schedule of Billing Rates, including hourly billing rates and/or per service billing rates as applicable. The Billing Rates include all costs for any identified services and the Service Provider shall not be entitled to any additional compensation for providing those services. The Schedule of Billing rates shall remain in full force and effect for the term of this Agreement, including all renewal periods.

7.03 **Maximum Fee Schedule:** Attached as **Exhibit F**, and incorporated herein, is the Service Provider's Project Management Services Maximum Fee Schedule. In no event shall the total compensation paid to the Service Provider for Basic Services on an individual project exceed the allowable rate established by the the Project Management Services Maximum Fee Schedule.

7.04 **Basic Services:** For Basic Services rendered in connection with any project authorized pursuant to this Agreement, Service Provider shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Service Provider's Project Proposal, up to the maximum "Not to Exceed" amount approved in Service Provider's Project Proposal.

- a. In no event shall the total compensation paid to the Service Provider for Basic Services on an individual project exceed the allowable rate on **Exhibit F**.

- b. For purposes of determining the maximum Basic Services fee permitted under this Agreement, rates for Basic Services shall be computed as the Design Cost plus the Construction Cost times the interpolated fee percentage on **Exhibit F**.
- c. For purposes of determining the maximum Basic Services fee permitted under this Agreement, the Design Cost shall be the fee paid to the design professional and its consultants, exclusive of reimbursable expenses paid to the design professional and its consultants.
- d. For purposes of determining the maximum Basic Services fee permitted under this Agreement, the Construction Cost amount shall be the Base Bid amount, exclusive of all elements of the project not managed or specified by the Service Provider, submitted by the construction contractor for whichever construction contract methodology is employed. The Construction Cost amount shall be exclusive of any alternate bids or pricing or of any cash allowances which are not included within the final cost of work.

**7.05 Additional Services:** Additional Services are those services which shall be provided if authorized or confirmed in writing by the Owner and for which compensation will be provided as described in this Agreement in addition to Basic Compensation. For approved Additional Services provided in connection with any project authorized by this Agreement, Service Provider shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Service Provider's Additional Services Proposal, up to the maximum "Not to Exceed" amount approved in Service Provider's Additional Services Proposal. Prior to commencing any Additional Service, Project Service Provider shall prepare for acceptance by the Owner an Additional Services Proposal, in the form attached hereto as **Exhibit C**, or other format as directed by Owner, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Project Service Provider has determined that such service are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Project Service Provider is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. Project Service Provider shall proceed only after written acceptance by Owner of the Additional Services Proposal.

**7.06 Consultant Costs:** Unless approved in advance by the Owner, Service Provider shall pay for all consultant services and costs associated with consultant's services under this Agreement, whether basic services or additional services, out of Service Provider's fees. Owner is not responsible for any such consultant fees or costs unless otherwise agreed to in writing.

## ARTICLE 8 REIMBURSABLE EXPENSES

**8.01 Reimbursable Expenses:** Reimbursable Expenses are in addition to compensation for basic and additional services. These include actual out-of-pocket reasonable expenditures made by the Service Provider and the Service Provider's employees and consultants incurred solely and directly in connection with Service Provider's performance of its

services hereunder for the following expenses. Reimbursable Expenses recoverable by the Service Provider under this Agreement are limited to the following:

- a. Fees paid for securing approval of authorities having jurisdiction over the Project for design phase services.
- b. Professional models, mockups, photography and renderings related to building design as requested by the Owner.
- c. When expressly directed and approved in advance by the Owner, reproductions, printing, binding, collating, and handling of reports, drawings, specifications, and associated shipping and mailing, or other project-related work product, other than that used solely in-house by Service Provider and its consultants or for project progress/review meetings.
- d. Expense of any additional insurance coverage or limits, requested by the Owner in, addition to the coverage required by the contract.
- e. Expense of transportation and living expenses in connection with out-of-state travel approved in advance in writing by the Owner and directly associated with the Project will be reimbursed in accordance with Rider 107, Owner's current Travel Policy, attached as **Exhibit L**.
- f. Unless expressly directed, and approved in advance, by the Owner, transportation (including mileage and parking expenses) and living expenses incurred within the State of Texas will not be subject to reimbursement.
- g. Expenses not allowed for reimbursement include telephone charges, FAX service, alcoholic beverages, laundry, valet service, entertainment or any non-project related items. All tips must be included within the per diem allowances.

**8.02 Compensation for Reimbursable Expenses:** The Service Provider and its employees and consultants, shall be compensated for the actual, out-of-pocket, reasonable costs for all approved Reimbursable Expenses that are incurred solely and directly in connection with the performance of the Service Provider's services and duties under this Agreement or in the interest of any particular project. Service Provider shall submit receipts for all reimbursable expenses along with any reimbursement request. Owner shall not pay a mark-up on Reimbursable Expenses. Unless expressly directed and approved in advance in writing by Owner, Service Provider shall not invoice Owner for any Reimbursable Expense which is not expressly listed in Article 8.

**8.03 Proposal Costs Not Recoverable:** Service Provider is solely responsible for any expenses or costs, including expenditures of time, incurred by the Service Provider and its employees and consultants in the development of Project Proposals or Additional Services Proposals. Such expenses or costs are not Reimbursable Expenses.



## ARTICLE 9 INVOICING

9.01 **Monthly Invoices:** Service Provider shall submit a monthly record or invoice of services performed under this Agreement identifying all fees earned and reimbursable expenses incurred in the previous month. Invoices shall be submitted in a format approved by the Owner and must contain at least the following information:

- a. Project Name and Work Order Number;
- b. Owner Agreement Number;
- c. Service Provider's Tax Identification Number;
- d. Name of Project Manager;
- e. Identification of billing period, by calendar month, to which the invoice applies;
- f. Itemized description of services provided including the names, billing rates and amount of time per task expended by all persons who performed services on the project during the billing period;
- g. Completion status of project by percentage;
- h. Total amount of invoice;
- i. Total amount of prior invoices and maximum contract sum;
- j. Copy of all receipts in support of any reimbursable expenses invoiced.

9.02 **Limited to Maximum Contract Sum:** It is the responsibility of Service Provider not to provide services or submit invoices that exceed the allowable fee amount established for any specific project in the Purchase Order issued by the Owner. Services provided, and/or expenses incurred that exceed the maximum contract sum without Owner's written consent will be at Service Provider's financial risk and Owner shall not be obligated to pay for any such services or expenses.

9.03 **Prompt Payment:** For purposes of Texas Government Code § 2251.021(a)(2), the date the performance of service is completed is the date when the Owner's representative approves the invoice. Payment of invoices shall be made within 30 days of Owner's approval.

9.04 **Invoice Submittal:** Invoices shall be submitted to:

MD Anderson Cancer Center  
Accounts Payable – Box 199  
P. O. Box 301401  
Houston, TX 77230-1401

The email address is: [mdaccap@mdanderson.org](mailto:mdaccap@mdanderson.org)

**9.05 Exceptions to Payment:** Regardless of any other provision of this Agreement, Owner shall not be obligated to make any payment requested by Service Provider under this Agreement if any of the following conditions precedent exist:

- a. Service Provider is in breach or default under this Agreement;
- b. The requested payment includes services not performed in accordance with this Agreement; provided, however, payment shall be made for the balance of the services that are performed in accordance with this Agreement;
- c. The total of Service Provider's invoices exceed the maximum contract sum;
- d. Service Provider has failed to make payments promptly to consultants or other third parties used in connection with the services for which Owner has made payment to Service Provider;
- e. Service Provider becomes insolvent, makes a general assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under the bankruptcy laws; or
- f. If Owner, in its good faith judgment, determines that the balance of unpaid compensation is insufficient to complete the services required under this Agreement.

**9.06 Partial Payment:** No partial payment by Owner shall constitute or be construed as final acceptance or approval of any services or as a release of any of Service Provider's obligations or liabilities with respect to such services.

**9.07 Subcontractor Payment:** Service Provider shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

**9.08 Final Payment and Release:** The acceptance by Service Provider or Service Provider's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Service Provider or Service Provider's successors have or may have against Owner pursuant to this Agreement except those claims specifically identified in writing by Service Provider as unsettled at the time of the final request for payment.

## ARTICLE 10 SERVICE PROVIDER'S ACCOUNTING RECORDS

**10.01** Service Provider shall maintain records of costs, expenses and billings pertaining to services performed under this Agreement in accordance with generally accepted accounting principles. Such records shall be available to the Owner or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after expiration or termination

of this Agreement. Owner shall have the right to audit and to verify the details set forth in Service Provider's billings, certificates, and statements, either before or after payment. The terms of this paragraph shall survive any termination of the Agreement.

## ARTICLE 11 OWNERSHIP AND USE OF DOCUMENTS

11.01 All documents prepared by the Service Provider are instruments of service and shall remain the property of the Service Provider. The Owner shall be permitted to retain copies, including reproducible copies, of all documents prepared by the Service Provider for information and reference in connection with the Owner's use and occupancy of the project. Owner shall have an irrevocable, fully paid-up perpetual license and right, which shall survive the termination of this agreement, to use the documents, including the originals thereof, and the ideas and designs contained therein, for the completion of, and in connection with, the project, regardless of the Service Provider involvement. The documents shall not be used by the Owner or the Service Provider on other projects, except by agreement in writing.

11.02 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as publication in derogation of the Service Provider's rights.

## ARTICLE 12 TERMINATION OF AGREEMENT

12.01 **Termination for Cause:** This Agreement may be terminated by either party upon ten (10) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured prior to the expiration of the notice period.

12.02 **Termination for Convenience:** This agreement may be terminated for convenience by the Owner in whole or in part, upon at least ten (10) days' written notice to the Service Provider.

12.03 **Compensation:** In the event of termination not the fault of the Service Provider, the Service Provider shall be entitled to compensation for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Service Provider delivers to Owner statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Service Provider prior to termination.

ARTICLE 13  
DISPUTE RESOLUTION

**13.01 Government Code Chapter 2260 Controls:** Service Provider'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 Service Provider'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.

**13.02 Owner's Representative:** The Owner designates the Vice President, Operations and Facilities, as its representative in dispute resolution procedures.

ARTICLE 14  
INSURANCE

**14.01 Insurance:** For services performed on Owner's premises, the Service Provider shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

- A. Contractor, consistent with its status as an independent contractor, will carry at least the following insurance in such form, with such companies and in such amounts (unless otherwise specified) as MD Anderson may require:
  - (i) Worker's Compensation insurance with Statutory Limits, and Employer's Liability insurance for at least One Million Dollars (\$1,000,000) per accident or disease. Policy must include All States Endorsement and a waiver of all rights of subrogation and other rights against MD Anderson.
  - (ii) Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal and Advertising Injury, Completed Operations/Products Liability, Medical Expenses, Interest of Employees as additional insureds and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) per occurrence on an occurrence basis.
  - (iii) Comprehensive Auto Liability insurance covering all owned, non-owned or hired automobiles to be used by Contractor, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.
- B. Contractor will deliver to MD Anderson:
  - (i) Documentation satisfactory to MD Anderson in its sole discretion, evidencing the existence of all such insurance promptly after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to

be performed by Contractor under this Agreement from or after the date of this Agreement; and

- (ii) Additional evidence, satisfactory to MD Anderson in its sole discretion, of the continued existence of all such insurance not less than thirty (30) days prior to the expiration of any such insurance. If, Contractor fails to pay any of the renewal premiums for the expiring policies, MD Anderson will have the right to make the payments and set-off the amount thereof against the next payment coming due to Contractor under this Agreement.

C. Such insurance policies, with the exception of Workers' Compensation and Employer's Liability, will name and will reflect MD Anderson as an Additional Insured and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to MD Anderson, giving MD Anderson the right to pay the premium to maintain coverage. If MD Anderson exercises its right to pay the premium, Contractor will reimburse MD Anderson for the cost of the premium within ten (10) days after receipt of written request from MD Anderson.

D. The insurance policies required in this Agreement will be kept in force for the periods specified below:

- (i) Employer's Liability Insurance, Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance will be kept in force until receipt of final payment by Contractor; and
- (ii) Workers' Compensation Insurance will be kept in force until the services have been fully performed and accepted by MD Anderson in writing.

**14.02 Professional Liability Insurance:** The Service Provider shall carry such professional liability and errors and omissions insurance covering the services provided by the Service Provider and any and all consultants, as acceptable to and approved by the Owner. The fees for such insurance shall be at the expense of the Service Provider. The minimum coverage amount shall be ONE MILLION DOLLARS (\$1,000,000.00).

**14.03 Notice of Cancellation:** Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

**14.04 Policy Review:** Upon request the Service Provider shall furnish complete sets of its insurance policies to Owner for review.

## ARTICLE 15 INDEMNITY

15.01 The Service Provider shall hold Owner, The University of Texas System, and the Regents, officers, agents and employees of both institutions harmless and free from any loss, damage or expense arising out of any occurrence relating to this Agreement or its performance and shall indemnify Owner and The University of Texas System, their Regents, officers, employees, customers, agents, successors and assigns against any damage or claim of any type arising from the negligent or intentional acts or omission of the Service Provider, its employees, agents and/or assigns.

## ARTICLE 16 HISTORICALLY UNDERUTILIZED BUSINESSES

16.01 The Owner has adopted **Exhibit H**, Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. Service Provider, as a material provision of the Agreement, must comply with the requirements of the Policy and adhere to any HUB Subcontracting Plan submitted with Service Provider's Proposal. No changes to the HUB Subcontracting Plan can be made by the Service Provider without the prior written approval of the Owner in accordance with the Policy.

## ARTICLE 17 MISCELLANEOUS PROVISIONS

17.01 **Appointment of Representative:** Owner may designate a representative to act partially or wholly for Owner in connection with this Agreement. Service Provider shall coordinate its services solely through the designated representative.

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

17.03 **Confidentiality:** The Service Provider 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.

17.04 **Successors and Assigns.** The Owner and the Service Provider, 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 Service Provider, and Service Provider'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.

**17.05 Subcontracting:** The Service Provider agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, the Service Provider 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.

**17.06 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 Service Provider and Owner may terminate this Agreement without further duty or obligation hereunder. Service Provider acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

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

**17.08 Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, the Service Provider 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.

**17.09 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.

**17.10 Payment of Debt or Delinquency to the State:** Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Service Provider agrees that any payments owing to Service Provider 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.

**17.11 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. Service Provider shall avail itself of all tax exemptions applicable to Service Provider's work or expenses.

**17.12 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.

**17.13 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.

**17.14 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.

**17.15 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.

**17.16 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.

**17.17 Governing Law:** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Texas without regard for choice of law principles. All obligations of the parties created hereunder are enforceable in Harris County, Texas. Harris County is the sole venue for any legal action to enforce this Agreement.

**17.18 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.

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

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

**17.21 Authority to Act:** If Service Provider is a corporation or a limited liability company, Service Provider 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 Service Provider has been duly authorized to act for and bind Service Provider.

## ARTICLE 18 NOTICES

18.1 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may delivered in person to the designated representative of the Service Provider 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.

18.2 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.

If to Owner:

Dwain Morris  
Vice President and Chief Financial Officer  
Finance, Office of the CFO  
1515 Holcombe Blvd., Unit 1495  
Houston, TX 77030

With Copies to:

William E. Bailey, J.D., C.P.A.  
Executive Director, Facilities Finance  
Facilities Management, Office of the Vice President  
6900 Fannin, Suite 11.1022  
Houston, Texas 77030

If to Service Provider:

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BY SIGNING BELOW, the Contractor has executed and bound itself to this Agreement as of the day and year first above written. The Agreement shall become effective only upon the execution of the Agreement by both parties and the issuance of a Purchase Order by Owner to the Contractor. Change orders, additional services, amendments, modifications, deletions or other changes to the Agreement, if any, shall become effective only upon the issuance of a Purchase Order by Owner to the Contractor. Only Supply Chain Management is authorized to award official agreements and issue Purchase Orders binding on Owner.

(SEAL)

*[Service Provider's Name]*

ATTEST:

By: \_\_\_\_\_  
(original signature)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
(original signature)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CONTENT APPROVED:

OWNER:  
THE UNIVERSITY OF TEXAS  
M. D. ANDERSON CANCER CENTER

Office of the Vice President  
Operations & Facilities Management

Office of the CFO  
Finance

By: \_\_\_\_\_  
Name: Spencer Moore  
Title: Vice President  
Operations & Facilities Management

By: \_\_\_\_\_  
Name: Dwain Morris  
Title: Vice President and Chief Financial  
Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBITS

Exhibit A - Service Provider's Schedule of Billing Rates  
Exhibit B - Authorization to Commence Work  
Exhibit C - Additional Services Proposal  
Exhibit D - Pay Application  
Exhibit E - Scope of Services  
Exhibit F - Fee Schedule  
Exhibit G - Execution of Offer  
Exhibit H - Policy on Utilization of Historically Underutilized Business  
Exhibit I - Attachment 1 to Exhibit H - HUB Subcontracting Plan  
Exhibit J - Rider 105, Contractor's Affirmations and Warranties  
Exhibit K - Rider 106, Premises Rules  
Exhibit L - Rider 107, Travel Policy  
Exhibit M - Rider 117, Compliance with Institutional Policies  
Exhibit N - Sales Tax Exemption Form  
Exhibit O - Rider 1 Quality Assurance

## **EXHIBIT A**

### **SERVICE PROVIDER'S SCHEDULE OF BILLING RATES**

**Include billing rates for positions listed and add others as needed**

#### **POSITIONS:**

**Principal**  
**Senior Project Manager**  
**Project Manager**  
**Peer Reviews**  
**Senior Cost Estimator**  
**Cost Estimator**  
**Project Budget Analyst**  
**Schedule Analyst**  
**Resident Construction Manager**  
**Senior Inspector**  
**Inspector**  
**Senior Commissioning Manager**  
**Safety / Quality Manager**  
**Office Manager**  
**Administrative Assistant**

## EXHIBIT B

### AUTHORIZATION TO COMMENCE WORK

**Name of Agreement:** (Enter type of Agreement from top of page 1)

Purchase Order Number: \_\_\_\_\_

Project Name: (If applicable) \_\_\_\_\_

Related Project Number \_\_\_\_\_

Campus: \_\_\_\_\_

Date: \_\_\_\_\_

To: (State name and address of Service Provider)

\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

The Owner accepts your Proposal dated \_\_\_\_\_, to provide the described services for the referenced project. In accordance with the terms and conditions of the Agreement dated \_\_, 200\_\_ between MD Anderson Cancer Center (“Owner”) and the undersigned (“Service Provider”), you are hereby authorized to commence work in compliance with the terms described below:

- 1) Owner has requested the performance of the services described in the Proposal and attached as Exhibit 1.  
(further describe services if required)
- 2) The Service Provider agrees to perform the Services described above subject to an in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and for reimbursement of expenses in accordance with the Agreement incurred solely in connection with the performance of such Services, but which reimbursement for expenses will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
- 3) The Service Provider will perform the services in accordance with any schedule attached hereto (attach schedule if applicable), but in any event not later than \_\_\_\_\_ (\_\_\_\_\_) days after Service Provider is authorized to proceed.

MD Anderson Cancer Center

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

## AGREEMENT AUTHORIZATION SUMMARY

ORIGINAL MAXIMUM CONTRACT SUM \$ \_\_\_\_\_  
(Refer to Art. 2.01 of Agreement)

DEDUCT PREVIOUS WORK AUTHORIZATION AMOUNTS (\$\_\_\_\_\_)

List Previous Authorization Numbers: \_\_\_\_\_

NET BALANCE CONTRACT AMOUNT \$\_\_\_\_\_

THIS AUTHORIZATION DEDUCTION (\$\_\_\_\_\_)  
(Amount of this Work Order)

REMAINING CONTRACT SUM \$\_\_\_\_\_

cc: Service Provider  
Project Manager  
Accounting Manager  
Central File

## EXHIBIT C

### ADDITIONAL SERVICES PROPOSAL

**Name of Agreement:** (Enter type of Agreement from top of page 1)

**MD Anderson Master Agreement Number:** (Enter Agreement number from top of page 1)

**Purchase Order Number:** (Applies to Additional Services Only)

CPM Project Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Campus: \_\_\_\_\_

Date: \_\_\_\_\_

To: CPM Project Manager: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

From: Service Provider: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### SERVICE PROVIDER

Please refer to the Agreement dated \_\_\_\_\_, 20\_\_ between MD Anderson Cancer Center (“Owner”) and the undersigned (“Service Provider”) as amended to the date hereof (such agreement as so modified and amended being hereafter called the “Agreement”) pursuant to which Service Provider is to perform certain services. The terms, which are defined in the Agreement, shall have the same meanings when used in this letter.

1. Owner has requested the performance of the services described below which Service Provider deems to be Initial Project [Additional] Services.

*[INSERT DESCRIPTION OF SERVICES OR ATTACH APPROVED PROPOSAL TO WORK ORDER]*

2. Service Provider agrees to perform the Initial Project [Additional] Services described above subject to and in accordance with the terms and provisions of the Agreement for a fee which will be determined in accordance with the Agreement but which will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_).



3. Service Provider will perform the services no later than \_\_\_\_\_,  
20\_\_ (\_\_\_\_\_) days after Service Provider is authorized to proceed.

*If the foregoing is acceptable to you, please so execute by signing the enclosed copy of this letter in the space below and insert the date.*

Service Provider

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Current Work Order Summary**

ORIGINAL WORK ORDER AMOUNT: (\$\_\_\_\_\_)

Previous Additions: (\$\_\_\_\_\_)

Previous Deductions: (\$\_\_\_\_\_)

NET BALANCE OF WORK ORDER AMOUNT: (\$\_\_\_\_\_)

THIS Addition / Deduction: (\$\_\_\_\_\_)

ADJUSTED WORK ORDER AMOUNT: (\$\_\_\_\_\_)

**MD ANDERSON CANCER CENTER**

*Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_. Service Provider is authorized to commence performance of the Initial Project [Additional] Services on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.*

CPM Project Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

xc: CPM  
CPM Project Manager  
CPM Group Accounting Supervisor  
Central File

**EXHIBIT D**  
**MD ANDERSON CANCER CENTER**  
**APPLICATION FOR PAYMENT**

NAME OF AGREEMENT: \_\_\_\_\_ {AS SHOWN ON CONTRACT} \_\_\_\_\_ CPM PROJECT NO. \_\_\_\_\_ {ENTER No.} \_\_\_\_\_

WORK ORDER NUMBER: \_\_\_\_\_ {AS SHOWN ON AUTHORIZATION TO COMMENCE WORK} \_\_\_\_\_

NAME OF PROJECT: \_\_\_\_\_ {ENTER PROJECT NAME} \_\_\_\_\_

CAMPUS: \_\_\_\_\_ The University of Texas MD Anderson Cancer Center \_\_\_\_\_

**CONTRACT PAYMENT SUMMARY**

1	Maximum Contract Sum: (as shown in Article 2 of Agreement)	\$	_____
2	Approved Additional Service Extras:	\$	_____
3	Approved Additional Service Deductions:	\$	_____
4	Current Maximum Contract Sum:	\$	_____ 0
	Identify the latest Authorized Work Order To Date Prior to this Work Order: _____		
5	Total of All Work Orders Previously Authorized:	\$	_____
6	Less Previous Payments for All Work Orders:	\$	_____
7	Current Balance Available:	\$	_____ 0

**WORK ORDER PAYMENT REQUEST**

1	Original Work Order Amount	\$	_____ 0
2	Approved Additional Service Extras:	\$	_____
3	Approved Additional Service Deductions:	\$	_____
4	Current Work Order Amount:	\$	_____ 0
	Total Percent (%) Completed to Date: _____		
5	Total Amount Earned to Date:	\$	_____ 0
6	Less Previous Payments:	\$	_____
7	Current Payment Due:	\$	_____ 0
8	Balance to Finish	\$	_____ 0

**REIMBURSABLE EXPENSES**

	TYPE	AMOUNT
1	Travel	\$ _____
2	Reproduction	\$ _____
3	Postage and Handling	\$ _____
4	Communication Expenses	_____
5	Other	\$ _____
6	Subtotal	\$ _____ 0
7	Amount Previously Billed:	deduct \$ _____ 0
8	Net Amount Due this Statement (ATTACH ALL SUPPORTING INVOICES)	\$ _____ 0

**RECAPITULATION**

1	Work Order Payment Request	\$	_____ 0
2	Reimbursable Expenses	\$	_____ 0
3	Total Amount Earned This Application	\$	_____ 0

**HUB PAYMENT INFORMATION**

☐ NO - HUB subcontracting participation is not part of this payment. COMPLETE ATTACHMENT I.

☐ YES - HUB subcontracting participation is part of this payment. COMPLETE ATTACHMENT H.

**SERVICE PROVIDER CERTIFICATION**

I, the Service Provider, do hereby certify that all insurances required by the Agreement are in full force and effect as of this date.

I, the Service Provider, do furthermore certify that all amounts shown are correct and now due.

By: \_\_\_\_\_  
(Signature of Authorized Agent of Service Provider)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**AUTHORIZATION**

By:

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(PM)

Date:

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By:

---

(Director)

Date:

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## **EXHIBIT E**

### **SCOPE OF SERVICES**

#### **PROJECT MANAGEMENT SERVICES**

##### **OBJECTIVE**

Owner's Capital Improvement Program (major capital, minor construction, repair, and rehabilitation projects) includes numerous construction and renovation projects. These projects range in value from approximately \$100,000 to more than \$300,000,000. The construction and renovation projects include healthcare facilities, research laboratories, and office and administration buildings. Specific projects vary in timing, complexity, and dollar-value. Project funding approval varies based on projects that have received funding approval, funding approval that is pending, and funding approval that is anticipated at a future date. Owner executes contracts with design professionals and construction companies through various contracting methodologies such as competitive sealed proposals, design-build, construction manager at risk, and job order contracts.

Owner may negotiate a project specific scope of work and fee for each unique project on an as-needed basis, as determined at the sole discretion of Owner and in accordance with the terms and conditions of the Agreement. Upon the successful negotiation of a project specific scope of work and fee, the Owner will issue a separate Purchase Order and Notice to Proceed for that specific scope of work. As the Service Provider completes the proposed scope of work, the Service Provider will invoice the Owner according to the terms and conditions of the Agreement.

##### **GENERAL SCOPE OF SERVICES**

The actual scope of services solicited under an individual Request for Proposal will vary from project to project according to specific project requirements. In general, the anticipated scope of services for Purchase Orders issued under the terms and conditions of the Agreement may include, but are not necessarily limited to, the following.

- Project schedule development, verification, and monitoring.
- Field verification of existing project conditions.
- Management of material sampling and testing.
- Project programming to ascertain the project scope of work.
- Review of schematic design including energy efficiency options with associated return on investment financial analyses.
- Review of design development.
- Project value engineering.
- Project cost estimating.
- Project constructability analysis and constructability recommendations.
- Review of bidding/construction/ contract documents.

- Preparation of project bid packages.
- Coordination of project reviews with regulatory agencies as necessary.
- Assisting MD Anderson in obtaining competitive bids under the construction manager at risk, design-build, or sealed bid contracting methodologies.
- Reviewing A&E, contractor, and consultant pay applications.
- Periodically visiting the construction site to confirm that the work is progressing according to the contract documents, including formal inspections prior to covering walls and ceiling and at the time of substantial completion. These construction site visits to also include quality assurance and control reviews and commissioning to insure the Owner receives what is being procured under the terms of the project's contract(s).
- Commissioning technical specifications outlining commissioning responsibilities will be included as an integral part of the project's contract documents.
- Reviewing shop drawings and other contractor submittals to confirm compliance with design intent.
- Ensuring accurate "As-Constructed" or "As-built" documents are delivered to the Design Firm(s) from the contractor.
- Preparation of weekly and monthly project status reports including budget and schedule summaries and details.
- Issuance of notices on project activities that may impact operations of the University and its facilities.
- Prepare and process Owner's purchase requisitions
- Prepare and distribute all project correspondence
- Develop and implement Owner's activation and move-in activities.
- Other professional services as may be necessary to address specific project needs.

### **RESPONSIBILITIES AND ACTIVITIES**

Project management services for a specific project will typically include one or more of the following responsibilities and activities.

#### **PRECONSTRUCTION PHASE SERVICES (COORDINATION, SCHEDULING, BUDGETING, MANAGING THE DESIGN TEAM AND CONSTRUCTION PLANNING)**

1. General Coordination.
  - 1.1. Participate as a member of the Construction Team in the development of the Project Facility program;
  - 1.2. Schedule, direct and attend regular meetings with other members of the Construction Team during the development of the design to advise them on site use and improvements, selection of materials, building systems and equipment and methods of delivery of materials, systems, and equipment. Prior to each meeting, the Project Manager shall prepare and distribute to the other Construction Team members a written agenda for the meeting;
  - 1.3. Prepare and distribute at each Construction Team meeting a memorandum setting forth the list of critical activities which require immediate action and the date(s) by

- when the activity must be completed, and record and distribute the minutes of each meeting;
- 1.4. Provide recommendations and information to the other members of the Construction Team on: construction feasibility; availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs, temporary Project facilities; equipment, materials and services for common use of Construction Contractors; factors related to cost, including costs of alternative designs or materials, preliminary budgets, and possible economies; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed Construction Contract Documents, and any other matters necessary to accomplish the Project in accordance with the schedule and project budget;
  - 1.5. At Owner's request, attend public meetings and hearings concerning the development and schedule of the Project;
  - 1.6. Conduct a formal value engineering workshop for the other members of the Construction Team after schematic design is complete; and
  - 1.7. Develop a "Constructability Review" report which is a report resulting from frequent communication with the Construction Team and which will outline items that in the Project Manager's opinion may cause problems in the way the Project is to be constructed and which will review the overall coordination of specifications and drawings, details and discrepancies that if left unattended may result in Change Orders or claims once the Project is bid;
  - 1.8. Creation and continuous updating of a decision tracking system in a format acceptable to Owner; and
  - 1.9. Coordination and integration of all capital, fire damage repair, and other projects relating to the assigned project regardless of whether such activities are defined as part of the Project.

## 2. Scheduling.

- 2.1. Develop Owner's critical path Project schedule ("Schedule") for the other Construction Team members' review and the Owner's approval, that coordinates and integrates the Project Manager's services, the Architect/Engineer's design, the work of other consultants and suppliers, and the Owner's activities with the anticipated construction schedules for other contractors, which Schedule shall require that "groundbreaking" for the Project shall occur on the date stipulated in the project documents;
- 2.2. Update the Schedule as is reasonably required but at least monthly to incorporate an updated, detailed listing for all activities of the Project, including: required activity sequences and durations; contract document package, completion dates, Owner contract document package review periods; Project building permits acquisition time requirements; Construction Contract bid dates; processing of shop drawings and samples; a recommended schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, and delivery dates of products requiring long lead time procurement; and methods to expedite and coordinate delivery of these purchases;

- 2.3. Provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project on or before the date stipulated in the project documents, so that the Owner can occupy and utilize the entire Project facilities on such date; and
- 2.4. Create and maintain the Schedule using the latest available version of the Primavera software program (the license and training for which shall be at Project Manager's sole expense).

### 3. Budgets.

- 3.1. Obtain from Owner all Project service, materials and property costs and expenses not known directly by the Project Manager, such costs to include, without limitation, Owner's personnel costs, force account labor and special consultants;
- 3.2. Prepare and update a Project budget, as necessary, during the schematic design, design development, and construction documents phases, for written approval by the Owner upon completion of each phase, such budget to include updating and reporting of all Project costs including, without limitation, construction, Architect/Engineer fees, fixtures, furnishings and equipment, special consultants and contractors, moving/relocation expenses, regardless of whether such costs are included in Owner's PPC or TPC;
- 3.3. Advise the other members of the Construction Team immediately if at any time the Project Manager has knowledge or belief that the previously established PPC, TPC, or PCB will not be met, and make recommendations to the Construction Team for corrective action;
- 3.4. At the completion of the Construction Contract Documents for any portion of the Project, update and refine a comparison of actual and projected costs to the Project Construction Budget defined in 1.01(o), and in the event such actual and projected costs exceed the original Project Construction Budget, develop and implement reasonable strategies to be approved by the Owner to reduce the costs projected to be incurred during all phases of the Project; and
- 3.5. Identify and establish the cost of each Construction Contractor bid package to be used for evaluation of the bids by the Project Manager and Owner and recommend the successful bidder to the Owner who shall make the final decision as to the identity of the successful bidder.

### 4. Managing the Design Team.

- 4.1. Incorporate the Owner's Standards and Standard Specifications and procedures, including, without limitation, the Chemical Management plan and Site Construction Guidelines, all of which are hereby incorporated by reference, into the Construction Contract Documents, and utilize the Owner's format as directed by the Owner;
- 4.2. Develop any Special Conditions of the Construction Contract Documents, which shall be approved in writing by the Owner at Owner's sole option and discretion;
- 4.3. At specified times required by the Owner, review the drawings and Project Manual as they are being prepared, advise Owner of any error, inconsistency or omission discovered, and recommend alternative solutions whenever design details affect construction feasibility budget risks or schedules;

- 4.4. Prepare a constructability review report based on the reviews referred to in subsection (3) above prior to the issuance of the Construction Contract Documents; and
- 4.5. Coordinate with the Owner to ensure that the Construction Contract Documents comply with all applicable State of Texas and The University of Texas System procurement requirements.
- 4.6. Start Design. Formally notify A/E to begin design services OR Issue Notice to Proceed for Part I Services to DB Contractor in conjunction with Procurement. Provides project information to design firm. Issue NTP to CM-R for Part I Services in conjunction with Procurement. Schedules Kick-Off workshop. Provides available project data (program, as-builts, etc...). Kick-Off Workshops, Partnering, Preconstruction, Construction, etc...)
- 4.7. Project Design Reviews. Manages the A/E's (or DB's) preparation of documents of each design phase for adherence to project program scope, schedule and budget. Schedules regular design phase submittals and coordinate review process. Confirm Program. Requests and collects review comments and recommendations from Institution representation. Keeps one copy of all design review documents submittal with comments. Coordinates all design stage reviews with appropriate staff/User Groups. Combines all staff comments into single submittal to A/E firm.
- 4.8. Project Design Scope Control. Ensures design documents incorporate review comments appropriate to approved scope of the project. Provides sole authority for changes to approved contracts in conjunction with Procurement. Monitors project development and provide budget/scope status reports to Owner. Manages input to value engineering and scope control issues. Coordinates approval of scope increase and facilitate funding transfers. Maintains control of end User Group to facilitate meeting their goals without losing control of the project scope or schedule. Coordinates, reviews and signs as necessary.
- 4.9. Project Design Approvals. Prepares documents and other communications seeking approval by Administration and/or UT System Administration. Issue notices of approval or acceptance to appropriate parties in conjunction with Procurement, Facilities Steering Committee Board of Regents & System Administration. Prepares documents, agenda items and other communications that require approval by System Administration and/or Board of Regents, other internal and external - Facilities Steering Committee. Advises CP&M Administration to Master Plan issues as may impact the project.
- 4.10. Coordinating Board Application. Assists in determination of room code information. Provides project information pertaining to GSF, ASF, Utilities, etc. Assists with preparation of Web based application. Prepares application with space and area input by CP&M Asset Management group; project costs, space and facility justification. Prepares THECB presentation material.

## 5. Construction Planning.

- 5.1. Identify for and recommend to the Owner the need for purchase of items requiring extended delivery times ("long lead items"), and expedite the procurement of such items to ensure their delivery by the required dates;



- 5.2. Make recommendations to the other members of the Construction Team regarding the division of Construction Contract drawings and Project Manual to facilitate the bidding and awarding of Construction Contracts, to allow for phased construction and to take into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, and the Owner's goals for HUB contractor participation;
  - 5.3. Review the Drawings and the Project Manual with the other members of the Construction Team to eliminate areas of conflict and overlap in the work to be performed by the various Construction Contractors;
  - 5.4. Develop Construction Contractor interest in the Project and assist the Owner in accordance with local and statutory requirements, in taking competitive bids on the work of the various Construction Contractors; schedule and conduct pre-bid conferences, and after review and analyses of the bids with the Owner and Architect/Engineer(s) make a recommendation to the Owner for contract awards, which awards shall be made by the Owner;
  - 5.5. Subsequent to the Owner's award of the Construction Contracts obtain information/documents (as described in the Project Manual) from the Construction Contractors necessary for Owner's execution of the Construction Contracts and if such information or documents are not available, the Project Manager shall recommend the appropriate course of action to the Owner with respect to any such Construction Contractor which cannot provide the information/documents;
  - 5.6. Assist the Owner, the appropriate Construction Contractor, the appropriate Architect/Engineer or consultant, in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, Owner's Facilities Steering Committee, the Board of Regents, the Texas Higher Education Coordinating Board, the Texas Department of Licensing and Regulation, the City Fire Department, and insurability;
  - 5.7. Refine, implement and monitor the HUB Goals including the Good Faith Effort Program (included at Attachment B) which promote equal employment opportunity in the provision of goods and services to the Owner for the Project; and
  - 5.8. Advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.
6. Furniture, Fixtures and Equipment. Consult with and make recommendations to the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate the Owner's purchase and installation of such items with the Owner as may be required to meet the Schedule.
  7. Project Management. Direct and oversee the services of the Architect/Engineer in accordance with the Contract between the Architect/Engineer and the Owner without assuming direct responsibility for the work of the Architect/Engineer, and direct and oversee the services of all special consultants in accordance with their respective agreements with Owner without assuming direct responsibility for the work of such consultants.

8. Moving. Planning and coordination of all end user relocations, including without limitation, people, functions, services, utilities, fixtures, furnishings, and equipment, necessary to accomplish the Project in accordance with the Schedule.

## **CONSTRUCTION PHASE SERVICES (PROJECT CONTROL, CHANGE MANAGEMENT, COMMISSIONING, CLOSEOUT)**

1. Project Control.
  - 1.1. Monitor the Work of the Construction Contractors as required and coordinate such Work with the activities and responsibilities of the Construction Team with a goal to attain completion of the Project Improvements at a cost not to exceed the Project Construction Budget and to attain Substantial Completion by the date stipulated in the project documents;
  - 1.2. Maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the Construction Contractors on the Project;
  - 1.3. Establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Construction Team;
  - 1.4. Establish procedures for coordination among the Construction Team, Construction Contractors and consultants with respect to all aspects of the Project, and implement such procedures;
  - 1.5. Schedule and conduct progress meetings, as required, at which time Construction Contractors, consultants and the Construction Team can discuss jointly such matters as procedures, progress, problems and scheduling;
  - 1.6. Provide regular monitoring of the Project Schedule as construction progresses; identify potential and actual Construction Contract variances between scheduled and probable completion dates, review the Construction Contract schedules for work not started or incomplete and recommend to the Owner and Construction Contractors adjustments in the Construction Contract schedules to conform with the probable Construction Contract completion dates and provide summary reports to the Owner of each Construction Contract schedule update and document all changes in Construction Contract schedules;
  - 1.7. Determine the adequacy of the Construction Contractors' personnel and equipment, and the availability of materials and supplies to meet the Construction Contractors' schedules in relation to the schedule; and
  - 1.8. Advise the Owner of any default by a Construction Contractor and the projected consequences of such default and make recommendations to the Owner regarding corrective action to replace the Construction Contractor in default and implement remedial action, as approved by the Owner, required to meet the Schedule, Total Project Cost, and Project Construction Budget.
  - 1.9. Monitors Project Status. Prepares monthly contingency status reports and track status of project changes and schedules. Meets regularly with owner to update status. Monitors project schedule, cost issues and contingency status. Prepares detailed monthly project status reports.

- 1.10. Request for Information (RFIs). Manages RFI process for timely issue resolution. Coordinates with staff directly as necessary to resolve RFI issues.
2. Cost Control.
  - 2.1. Develop and monitor an effective system of Project costs control, and provide regular reports to the other members of the Construction Team; identify variances between actual and budgeted or estimated costs and advise the other members of the Construction Team whenever projected costs exceed, or could be reasonably anticipated to exceed, budgets or estimates; revise and refine the initially approved Project Budget with the assistance of the other members of the Construction Team; present the revised Project Budget to the Owner for approval; incorporate the Owner-approved changes; and develop cash flow reports and forecasts, as needed, and provide same to Owner on a regular basis; and
  - 2.2. Maintain cost accounting records in good form on expenditures and materials, or for any other expenditures requiring accounting records; and afford the Owner access to these records and preserve them for a period of four (4) years after final payment is made by the Owner to the Project Manager.
3. Change Orders. Develop and implement a system acceptable to the Owner for the preparation, review and processing of Change Orders and recommend necessary or desirable Change Orders to the other members of the Construction Team for its review and recommendation for owner's approval and assist in negotiating Change Orders prior to submittal of same to the Owner for final approval.
4. Change Management. Responsible for completing project within budget and schedule. Manages change to contract scope, cost, or time. Oversees resolution of all change proposals and issue field directives/field orders. Obtains Owner approval of budget transfer, and increases to contract. Keeps Owner informed of all issues. Maintains control over User Groups requested changes.
5. Other Managed Work. Coordinates with the Contractor and Owner to make site accessible for other contract workers to coordinate work of separate vendors. Establishes work order or separate contracts for work order in conjunction with Procurement. Administers, inspects, and accepts the work of all contracts.
6. Construction Contractors.
  - 6.1. Develop and implement a written procedure acceptable to the Owner for the review, approval and processing of pay requests by Construction Contractors;
  - 6.2. Maintain strict enforcement of all Construction Contracts including retention of retainage amounts; and
  - 6.3. Make recommendations in writing to the Owner regarding Construction Contract default or Construction Contract modifications.

7. Wage Rates. Maintain strict enforcement of State of Texas prevailing wage laws. Cooperate with Owner in monitoring the submission to the Owner of payroll records by the various Construction Contractors when requested.
8. Permits. Assist the Architect/Engineer in obtaining all required building permits and special permits for permanent improvements, which does not include those permits normally required to be obtained by the various Construction Contractors, such as permits for inspection, temporary facilities, etc. The Owner is not subject to local building permit requirements and local building code enforcement.
9. Special Consultants. Assist the Owner in selecting and retaining professional services not otherwise described in this Agreement for the Project, and coordinate these services at the owner's request in order to meet the Schedule, without, however, assuming direct responsibility for the work of these consultants.
10. Review of Work and Safety.
  - 10.1. Review the Work of Construction Contractors for defects and deficiencies in the Work as specified in the Construction Contract Documents, on a regular and frequent basis, and prior to any work being covered up which also requires observation by Architect/Engineer or applicable authorities prior to being covered up, and as required pursuant to Section 5.01(a)(7) and (8) herein; and
  - 10.2. Assist the Owner in developing the safety standards to be included in the Construction Contracts, and adequately inform the Construction Contractors to coordinate safety programs with the other Construction Contractors in their work area. In the event the Project Manager becomes aware of any violations of safety-related practices and procedures by and of the Construction Contractors, the Project Manager shall be responsible for advising the Owner of such violations, but the Project Manager shall not be responsible for compliance of such safety-related practices by the Construction Contractors.
11. Document Interpretation. The Architect/Engineer shall be the interpreter of the design intent of the Construction Contract Documents, subject to the terms and conditions of the agreement between the Architect/Engineer and the Owner, provided, however, the Project Manager shall request such interpretations from the Architect/Engineer, with Owner consent, from time to time in order to facilitate the Project Manager's accomplishment of its duties under this Agreement.
12. Shop Drawings and Submissions. In collaboration with the other members of the Construction Team, the Project Manager shall establish and implement procedures for expediting the processing and Architect/Engineers' approval of shop drawings and other submissions.
13. Reports and Project Site Documents.
  - 13.1. The Project Manager shall record the progress of the Project, submit written progress reports to the other members of the Construction Team, including information on the

- Construction Contractors' Work and the percentage of completion, and keep a daily log of Project Construction activities available to the other members of the Construction Team; and each member of the Project manager's site personnel, whose job function involves or includes observation of Project construction, shall maintain a daily log of construction activities and observations which daily logs will be submitted to the Owner upon Substantial Completion; and
- 13.2. The Project Manager shall maintain at the Project site, updated records of contracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions; obtain data from Construction Contractors and maintain a current set of record drawings and project manual.
14. As-Built Drawings. The Project Manager shall monitor the Construction Contractors' production of as-built construction records and shall monitor the production of final, as-built Mylar record Project drawings by the Architect/Engineer for delivery to the Owner as may be required.
15. Substantial Completion of Work by Construction Contractors. Upon notification by a Construction Contractor, the appropriate members of the Construction Team (at a minimum, the Construction Contractor giving such notice, the Architect/Engineer or consultant responsible for the design of the Work which is the subject of the notice, the Project Manager, and the Owner) shall make a walk-through inspection in order to determine whether there is Substantial Completion of said Construction Contractor's Work. A list of unacceptable items shall be prepared by the Project Manager and presented to the Construction Contractor for resolution.
16. Substantial Completion of Project. Upon notification by the Project Manager, the appropriate members of the Construction Team (Owner, Project Manager, Construction Contractor, Architect/Engineer, etc) shall make a walk-through inspection in order to determine whether there is Substantial Completion of all Construction Contractors' Work, subject to the Owner's Uniform and Supplementary General Conditions. A list of unacceptable items shall be prepared by the Owner's representative and presented to the Project Manager for resolution subject to the Owner's Uniform and Supplementary General Conditions.
17. Punch List Preparation. Determines when area or system is ready to inspect. Coordinates preparation of the punch list (normally compiled by A/E). Interprets contract requirements to determine suitability of items noted on punch list. Participates in punch list process. Manages User Groups inspection efforts and assist in resolving User Group items needed that are determined not in the scope of the contract. Advises Owner of punch list status, as it will directly relate to occupancy schedule
18. Punch List Resolution. Coordinates entire punch list process. Tracks all punch list items through to resolution. Provides documentation. Schedules and facilitates meetings with Contractor to resolve punch list issues. Coordinates solutions to disputed punch list items.

19. **Start-Up.** With the Owner's operations' personnel in attendance at a time and date acceptable to both Parties, the Project Manager shall coordinate and supervise the inspection of utilities, operations' systems and equipment for readiness, and assist Owner in start-up and testing of such utilities, systems and equipment by the appropriate Construction Contractor.
20. **Commissioning.** Ensures compliance with contract which includes commissioning of all Contractor-provided equipment and validates Owner equipment when necessary. Coordinates outside commissioning agent, if appropriate, in addition to TAB firm in conjunction with Procurement. Arranges and facilitates commissioning and contract close-out workshops. Determines desirability and funding of outside commissioning agent. Coordinates in-house commissioning efforts for User Groups and Owner provided equipment. Participates in commissioning efforts, including inspections and system start-up reviews.
21. **Final Completion.** After receiving Owner's consent, the Project Manager shall establish the date of final completion for the Project and provide written notice to the other members of the Construction Team that the Project is ready for final inspection and walk-through; secure and transmit to the Owner, after final walk-through and final acceptance by the Owner, required guarantees, affidavits, releases, bonds and waivers; and, after final walk-through and final acceptance by the Owner, turn over to the Owner all keys, manuals, record drawings and surplus materials and supplies.
22. **Warranty.** The Project Manager shall collect and deliver to the Owner, in hard-back binders, all written warranties or guarantees specified in the Construction Contract Documents, prior to Final Completion. The Project Manager shall assist and represent the Owner through the one-year warranty period on matters involving malfunctions, defects or deficiencies of the Project. The Project Manager shall communicate with the Construction Contractors as necessary to correct all malfunctions, defects, and deficiencies in a timely manner and to reduce inconvenience to the Owner during this period. The scope of assistance shall include, but not be limited to, the following:
  - 22.1. Notify the Construction Contractor of malfunctions, defects, and deficiencies in workmanship or materials and request corrective actions;
  - 22.2. Prepare correspondence and other written data as necessary to document, clarify, and resolve discrepancies;
  - 22.3. Meet with the Construction Contractors at the Project site or other local places when requested by the Owner; and
  - 22.4. Take reasonable steps to pursue correction of malfunctions, defects, and deficiencies, provided however, only the Owner will exercise any of its legal remedies.
23. **Warranty Review.** The Project Manager shall also perform a thorough warranty review of the Project shortly before the one year anniversary of the date of Substantial Completion. As a result of this review, the Project Manager shall prepare a list of items needing correction. The Project Manager shall submit the list to the Owner as information and to the appropriate Construction Contractor for resolution and then actively pursue resolution of the items on the corrective action list.

## EXHIBIT F

### PROJECT MANAGEMENT SERVICES MAXIMUM FEE SCHEDULE

#### New Construction

<u>Project Cost</u>	<u>Dormitories Garages Warehouses</u>	<u>Classrooms Offices Other Buildings</u>	<u>Clinical Research Special Education</u>
Over \$200,000,000	1.50%	1.75%	2.00%
Over 100,000,000	1.75%	2.00%	2.25%
Over 50,000,000	2.00%	2.25%	2.50%
Over 25,000,000	2.25%	2.50%	2.75%
Over 15,000,000	2.50%	2.75%	3.00%
Over 10,000,000	2.75%	3.00%	3.25%
Up to 10,000,000	3.00%	3.25%	3.50%

#### Repair and Renovation

(1.33 times New Construction Percentage)

<u>Project Cost</u>			
Over \$200,000,000	2.00%	2.33%	2.66%
Over 100,000,000	2.33%	2.66%	2.99%
Over 50,000,000	2.66%	2.99%	3.33%
Over 25,000,000	2.99%	3.33%	3.66%
Over 15,000,000	3.33%	3.66%	3.99%
Over 10,000,000	3.66%	3.99%	4.32%
Up to 10,000,000	3.99%	4.32%	4.66%

**NOTE: WHEN COST FALLS BETWEEN THE TABULAR LIMITS, THE RATE WILL BE DETERMINED BY DIRECT INTERPOLATION.**

**EXHIBIT G**

**EXECUTION OF OFFER**



## **EXHIBIT H**

### **Policy on Utilization Historically Underutilized Businesses (Included Herein by Reference)**

**EXHIBIT I**

**ATTACHMENT 1 to EXHIBIT H**

**HUB Subcontracting Plan**

**EXHIBIT J**

**RIDER 105 – CONTRACTOR'S AFFIRMATIONS AND WARRANTIES**

**RIDER 105**  
**CONTRACTOR'S AFFIRMATIONS AND WARRANTIES**

By signing the Agreement, or accepting the Purchase Order, to which this Rider is attached Contractor affirms, certifies, and warrants that the information set forth in this Rider is current, complete, and accurate. Contractor agrees that in the event Contractor makes a false statement by affirming, certifying, or warranting the information set forth in this Rider, MD Anderson may, at its option, terminate the Agreement/Purchase Order to which this Rider is attached without further liability, and Contractor shall be removed from all MD Anderson bid lists.

Contractor agrees to notify MD Anderson in writing within thirty (30) days of any changes in the affirmations, certifications, and warranties made by Contractor under this Rider.

1. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that it has neither given, offered to give, and has no intention to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement/Purchase Order.
2. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that neither Contractor nor the firm, corporation, partnership or institution represented by Contractor, or anyone acting for such firm, corporation, or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et. seq. *Texas Business and Commerce Code*, or the federal antitrust laws, nor communicated directly or indirectly Contractor's bid or proposal made to MD Anderson to any competitor or any other person engaged in such line of business. By signing the Agreement, Contractor affirms, certifies, and warrants that it has not received compensation for participation in the preparation of the specifications for this Agreement or of the request for proposal—on which this Agreement is based. (Reference Section 2155.004, *Texas Government Code*.)
3. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that it is not suspended, debarred, or listed in the U.S. General Services Administration's List of Parties Excluded From Federal Procurement or Non-Procurement Programs, or excluded from award by the United States Office of the Inspector General ("OIG") regarding Medicare, Medicaid, or other federal programs. Contractor further acknowledges that MD Anderson is prohibited by federal regulations from allowing any employee, subcontractor or agent of Contractor to work on site at MD Anderson's premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Contractor affirms, certifies, and warrants that it shall not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals/Entities issued by the OIG to work on site at MD Anderson's premises or facilities. Contractor affirms, certifies, and warrants that it shall perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at MD Anderson's premises or facilities. Contractor acknowledges that MD Anderson will require immediate removal of any employee, subcontractor or agent of Contractor assigned to work at MD Anderson's premises or facilities if such employee, subcontractor or agent is found to be on the OIG's List of Excluded Individuals/Entities. The OIG's List of Excluded Individuals/Entities may be accessed through the following Internet website: <http://oig.hhs.gov/fraud/exclusions/listofexcluded.html>.
4. By signing hereon Contractor certifies it qualifies status in one of the below as defined by the State of Texas.

4.1 Contractor, **is a Small Business** (as defined by Chapter 2155 of the Texas Government Code), and claims the following status:

- |  |   |
|--|---|
| <input type="checkbox"/> (100) Small Business, Non-HUB                   | <input type="checkbox"/> (160) Non-minority, Female, Small Business           |
| <input type="checkbox"/> (100N) Disabled Person, Small Business          | <input type="checkbox"/> (171) Asian Pacific American, Male, Small Business   |
| <input type="checkbox"/> (141) Black American, Male, Small Business      | <input type="checkbox"/> (172) Asian Pacific American, Female, Small Business |
| <input type="checkbox"/> (142) Black American, Female, Small Business    | <input type="checkbox"/> (181) Native American, Male, Small Business          |
| <input type="checkbox"/> (151) Hispanic American, Male, Small Business   | <input type="checkbox"/> (182) Native American, Female, Small Business        |
| <input type="checkbox"/> (152) Hispanic American, Female, Small Business |   |

4.2 Contractor, **is not a Small Business** as defined above and claims the following status:

- |  |   |
|--|---|
| <input type="checkbox"/> (900N) Disabled Person          | <input type="checkbox"/> (971) Asian Pacific American, Male   |
| <input type="checkbox"/> (941) Black American, Male      | <input type="checkbox"/> (972) Asian Pacific American, Female |
| <input type="checkbox"/> (942) Black American, Female    | <input type="checkbox"/> (981) Native American, Male          |
| <input type="checkbox"/> (951) Hispanic American, Male   | <input type="checkbox"/> (982) Native American, Female        |
| <input type="checkbox"/> (952) Hispanic American, Female | <input type="checkbox"/> (900) None of the above              |
| <input type="checkbox"/> (960) Non-minority, Female      |   |

**RIDER 105**  
**CONTRACTOR'S AFFIRMATIONS AND WARRANTIES**

- 4.3 Contractor is to indicate below if they are /are not certified by the Texas Procurement and Support Services Division of the Texas Comptroller's Office as a Historically Underutilized Business.

\_\_\_\_\_ **YES**, Contractor is certified by the Texas Procurement and Support Services Division of the Texas Comptroller's Office.

\_\_\_\_\_ **NO**, Contractor is not certified by the Texas Procurement and Support Services Division of the Texas Comptroller's Office.

- 4.4 Contractor is:

\_\_\_\_\_ A Non-Resident Contractor (e.g., does not maintain a permanently staffed full time office in Texas).

\_\_\_\_\_ A Resident Contractor (e.g., does maintain a permanently staffed full time office in Texas).

\_\_\_\_\_ Anticipating the use of Texas Non-Resident firms as sub-contractors and will provide information of such contracts, when requested.

\_\_\_\_\_ Not anticipating the use of Texas Non-Resident firms as sub-contractors.

5. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that it will comply with all specifications, requirements, terms, and conditions set forth in this Agreement/Purchase Order and on any rider or attachments to the Agreement/Purchase Order. Contractor affirms, certifies, and warrants that the products or services Contractor provides under this Agreement/Purchase Order will meet or exceed the specifications set forth in this Agreement/Purchase Order.
6. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that all statements and information prepared and submitted under this Agreement/Purchase Order (including all information submitted by Contractor in response to or to verify the affirmations, certifications, and warranties set forth in this Rider) are current, complete, and accurate.
7. If Contractor is a franchise, then
- (a) Contractor affirms, certifies, and warrants that it shall maintain such franchise in full force and effect at all times during the existence of this Agreement/Purchase Order, and
- (b) Contractor shall provide MD Anderson with all data that MD Anderson, in its sole discretion, deems necessary to identify Contractor's franchise, the date on which Contractor's franchise will expire, and to certify that Contractor's franchise remains in good standing at all times during the existence of the Agreement/Purchase Order.
8. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that (1) no relationship (whether by blood, marriage, business association, capital funding agreement or by any other kinship or connection) exists between Contractor and an employee of MD Anderson, and (2) Contractor has not been an employee of MD Anderson within the twelve (12) month period immediately prior to the date of this Agreement/Purchase Order, or (3) in the event such a relationship does exist, full written disclosure of the relationship has been made by Contractor to MD Anderson prior the execution of this Agreement, or acceptance of Purchase Order. Contractor understands that all such disclosures will be subject to administrative review, and approval by MD Anderson prior to MD Anderson's execution of this Agreement/Purchase Order.
9. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that: (1) Contractor is not a party to any agreement with MD Anderson whereby it has licensed from MD Anderson any technology, invention, or other intellectual property that relates to or is used with any goods or services being acquired by MD Anderson hereunder; and (2) as a result of the sale to MD Anderson of the goods or services hereunder, Contractor will not owe, directly or indirectly, any royalties, fees, or other consideration of any kind to MD Anderson or any employee of MD Anderson under the terms of any license agreement with MD Anderson. Contractor will advise MD Anderson in writing of any change in status with respect to the foregoing items (1)-(2), by sending written notice within ten (10) days of such status change to: Legal Services, Unit 537, The University of Texas MD Anderson Cancer Center, P.O. Box 301439, Houston TX 77230-1439, ATTENTION: Chief Legal Officer.

**RIDER 105**  
**CONTRACTOR'S AFFIRMATIONS AND WARRANTIES**

10. OSHA COMPLIANCE

By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that all goods and services furnished under this Agreement/Purchase Order will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect as of the date on which the goods or services are furnished.

11. AFFIRMATIVE ACTION COMPLIANCE

In addition to the Contractor's affirmation, certification, and warranty under Section 10 of this Rider, if this Agreement exceeds \$50,000.00 in value Contractor, shall provide a copy of its written Civil Rights "Affirmative Action Compliance Program" which shall be incorporated into Exhibit A to this Rider. If Contractor is NOT required to have such a written Civil Rights "Affirmative Action Compliance Program", Contractor must state the reasons why it is not required to have such a written program in Exhibit A to this Rider.

\_\_\_\_\_  
CONTRACTOR NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
BY (ORIGINAL SIGNATURE)

\_\_\_\_\_  
COMPTROLLER I.D. NO., FEI NO. or SSN

\_\_\_\_\_  
TYPED NAME & TITLE

\_\_\_\_\_  
TELEPHONE NUMBER

**CORPORATE CONTRACTORS SHALL FURNISH THE FOLLOWING INFORMATION:**

\_\_\_\_\_  
WHERE INCORPORATED

\_\_\_\_\_  
CHARTER NUMBER

\_\_\_\_\_  
SOLE OWNER'S SOCIAL SECURITY NUMBER

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**EXHIBIT A**

**Civil Rights "Affirmative Action Compliance Program"**

**EXHIBIT K**

**RIDER 106 – PREMISES RULES**

## RIDER 106 PREMISES RULES

If this Agreement requires Contractor's presence on MD Anderson's premises, buildings, grounds, facilities, or campus, whether owned, leased or otherwise controlled by MD Anderson (collectively, "MD Anderson's campus"), Contractor represents and warrants that it will ensure that its representatives, agents, employees, and permitted subcontractors are aware of, fully informed about and in full compliance with Contractor's obligations under the following rules:

- A. Contractor (and its representatives, agents, employees and permitted subcontractors) will comply with all applicable MD Anderson rules and policies, including, without limitation, those related to environmental quality, safety, fire prevention, noise, information security, and architectural barriers issued by MD Anderson's Department of Environmental Health and Safety, (713) 792-2888, and those that restrict the use of alcohol on MD Anderson's campus.
- B. MD Anderson is a smoke-free institution. Smoking, or use of smokeless tobaccos, is prohibited throughout MD Anderson's campus.
- C. Contractor will have the right to access only those areas in MD Anderson's campus that are public areas or areas that it is necessary for Contractor to access in order to provide the products and perform the services under this Agreement. Cellular telephones and two-way radios are prohibited in some areas of MD Anderson's campus and Contractor affirms, certifies, and warrants that its representatives, agents, employees, and permitted subcontractors will abide by such prohibitions.
- D. It is the policy of MD Anderson to maintain a safe environment free from violence on MD Anderson's campus. Any direct or indirect threats or acts of violent behavior are prohibited. Violence includes, but is not limited to, intimidating, threatening, or hostile behavior; physical or verbal abuse; harassment, stalking, vandalism, arson, sabotage, use of weapons, possession of weapons on institutional property, the threat of any of the above, or any other act inconsistent with MD Anderson's campus violence policy. Intentionally bringing a prohibited weapon including a licensed, concealed handgun on MD Anderson's campus is a violation of MD Anderson's campus violence policy. Furthermore, any violation of a law prohibiting violence and violent behavior (including, but not limited to, the violation of Section 37.125 of the Texas Education Code or of Section 46.03 of the Texas Penal Code) also constitutes a violation of MD Anderson's campus violence policy. Violators of MD Anderson's campus violence policy or of any law prohibiting violence or violent behavior may be removed from or refused further access to MD Anderson's campus. Contractor represents and warrants that Contractor and all of its representatives, agents, employees, and permitted subcontractors will comply with MD Anderson's campus violence policy and all laws prohibiting violence and violent behavior. MD Anderson reserves the right to pursue criminal or civil actions against violators of MD Anderson's campus violence policy or of any law prohibiting violence and violent behavior. Contractor will remove from the performance of any work under this Agreement any Contractor representative, agent, employee, or permitted subcontractor that MD Anderson, in its sole discretion, finds has violated MD Anderson's campus violence policy or any law prohibiting violence and violent behavior.
- E. Contractor will ensure all personnel sent to work at MD Anderson's campus that have direct patient care/contact under this Agreement will be able to show proof of a tuberculosis screening having been completed within ninety (90) calendar days prior to starting work at MD Anderson's campus and every two years thereafter. Contractor will also be able to show proof that these same personnel do not have active tuberculosis. The results of the screening will be made available to MD Anderson upon request. Contractors with direct patient care/contact will also inform MD Anderson whether any of its onsite personnel have had, been exposed to, or been vaccinated against chicken pox. This paragraph does not apply to contractors deemed by MD Anderson to not have direct patient care/contact.
- F. Contractor will be solely responsible for ensuring that all of its agents, employees, personnel, permitted subcontractors, or representatives abide by the provisions set forth in this Rider 106.
- G. The University of Texas Police Department ("UTPD") & Security Equipment:  
  
The UTPD is the law enforcement agency of record for all property and premises owned, leased, or otherwise under the control of MD Anderson. The UTPD will be notified in matters relating to the following:
  - 1. Reporting of criminal incidents, including those occurring to or involving Contractor property and personnel if the incident occurs on MD Anderson campus;
  - 2. The investigation of crimes, including those involving Contractor's property and personnel, if the incident occurs on MD Anderson campus; and
  - 3. Reporting of security problems.
- H. Contractor will not retain the services of outside guard or law enforcement services in connection with work on MD Anderson's campus without the specific prior written approval of the Chief of the UTPD.
- I. Contractor will not install or operate any system intended to electronically control access and/or detect and report intrusion, hold-up or duress on any MD Anderson property, any MD Anderson leased premises or any premises otherwise under the control of MD Anderson. Where such systems are required due to the nature of the Contractor's operation, the UTPD will be responsible for approval, design and installation. Once approved by UTPD, the system's cost will be Contractor's responsibility.



**RIDER 106**  
**PREMISES RULES**

- J. Installation by Contractor of any security system is subject to the review and approval of UTPD. If Contractor desires to install an electronic security system in accordance with the terms of this Agreement, Contractor will contact the UTPD - Crime Prevention Component of UTPD at (713) 792-2890 and request that UTPD establish design criteria for the application. Contractor will provide written evidence of the estimated cost of the electronic security system to the Technical Services Component of UTPD located at 7777 Knight Road and, if the electronic security system is approved by UTPD, the Technical Services Component of UTPD will coordinate the installation of the approved system. Upon written approval of the UTPD Chief, Contractor may use a commercial installation company to install the electronic security system under the coordination of the UTPD.
- K. All security related systems must be monitored and controlled by the UTPD and UTPD must be the primary monitoring station. If Contractor utilizes the services of a commercial alarm company or a proprietary alarm monitoring station, the system may report to such location after first transmitting the alarm to the UTPD.
- L. Contractor is responsible for the performance of the persons Contractor assigns to provide services for MD Anderson on MD Anderson's campus. Contractor will not knowingly assign individuals to provide services on MD Anderson's campus who have a history of violent, unacceptable, or grossly negligent behavior or who have a felony conviction. Prior to supplying labor services under this Agreement, MD Anderson may require Contractor to provide a list identifying the individuals that may be assigned to MD Anderson along with a letter signed by an appropriate officer of Contractor that affirms compliance with this Rider. Contractor will revise such letter each time there is a change in Contractor's personnel assigned to MD Anderson's campus, but in any case, annually on the anniversary date of this Agreement.
- M. Contractor will ensure that all individuals assigned by Contractor to perform services on MD Anderson's campus will display in plain view a photo identification badge provided by MD Anderson while on MD Anderson's campus.
- N. Contractor will retain resumes of all Contractor's employees assigned to this project. Contractor will ensure the proper maintenance of these documents for a minimum of one (1) year after contract completion. Contractor will maintain all documentation, including the results of any background checks, during the term of this Agreement.
- O. MD Anderson will have the right to reject any individual(s) that Contractor offers to assign to MD Anderson's account for any reason. In addition, if Contractor and/or its personnel fail to abide by these Premises Rules, MD Anderson will have the right to deny Contractor and its personnel access to MD Anderson's campus.
- P. MD Anderson will not be obligated to pay for labor hours supplied by any individual(s) upon whom a background check and records check is not completed or who fails to meet the standards described in this Rider.

**EXHIBIT L**

**RIDER 107 – TRAVEL POLICY**

**Rider 107  
TRAVEL POLICY**

**All travel and expense costs will be calculated as follows:**

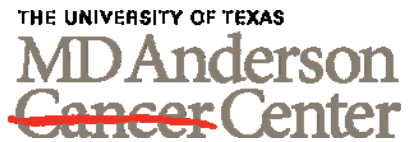
1. Vendor must use regular coach (state rate or corporate rate, whichever is lower) air transportation for travel in excess of 200 miles, unless otherwise agreed by MD Anderson. In order to maximize discounted airfares, Vendor, with the cooperation of MD Anderson, will schedule on-site visits far enough in advance to take advantage of most advance-purchase offers. In the event meetings or on-site visits are cancelled by MD Anderson, the Vendor may charge for any advance-purchase cancellation penalties imposed by the airline.
2. Corporate or state, whichever is lower, rate discounts will be used for hotel accommodations.
3. Maximum billable amount per person per day for meals will be \$36.00. Departing from MD Anderson prior to 12:01 p.m. negates any billing for meals for that day. Meal expenses are reimbursable for vendors who travel 50 miles or more, and stay overnight.
4. Rental cars will be the least expensive, air-conditioned, automatic transmission, mid-size car available to the vendor under corporate rate programs. Full coverage collision insurance may be used for rental cars, but personal protection plans will not be reimbursed.
5. Ground transportation, parking costs and tolls may be invoiced at cost.
6. Personal automobile mileage charges will be computed based upon actual miles to and from the appropriate office to and from the client facility. Mileage charges will be invoiced at the standard mileage rate recognized by the State of Texas at the time of invoicing.
7. Miscellaneous expenses (i.e., tips, transfers, etc.) will be invoiced at not-to-exceed \$5.00 per person per day, if deemed reasonable.

**All travel or miscellaneous expenses must receive prior written approval by the Project Coordinator. Vendor will not be reimbursed for expenses which do not receive this prior written approval.**

**All travel or miscellaneous expenses must be submitted with an original receipt. All approved expenses will be reimbursed at “actual cost” only. Vendor will not be reimbursed for expenses which are not accompanied by original receipts.**

**EXHIBIT M**

**RIDER 117 – COMPLIANCE WITH INSTITUTIONAL POLICIES**



**RIDER 117**  
**Institutional Policies**

In accordance with the education requirements set forth in Section 6032 of the Deficit Reduction Act of 2005 (Act), MD Anderson has implemented, and Contractor agrees to abide by, the following policies, as may be subsequently amended, that are available at: <http://www.mdanderson.org/about-us/doing-business/vendors-and-suppliers/index.html>

1. Fraud, Waste, and Abuse Policy
2. Hospital Compliance Plan
3. Non-Retaliation Policy

**EXHIBIT N**

**SALES TAX EXEMPTION FORM**

# Texas Sales and Use Tax Exemption Certification

*This certificate does not require a number to be valid.*

Name of purchaser, firm or agency <b>The University of Texas M.D. Anderson Cancer Center</b>	
Address (Street & number, P.O. Box or Route number) <b>1515 Holcombe Blvd, Unit 0186</b>	Phone (Area code and number) <b>(713) 745-6873</b>
City, State, ZIP code <b>Houston, TX 77030</b>	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: \_\_\_\_\_

Street address: \_\_\_\_\_ City, State, ZIP code: \_\_\_\_\_


Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

**EXEMPT UNDER SUBCHAPTER H. SEC. 151.309 GOVERNMENTAL ENTITIES.  
PURCHASER IS AN AGENCY OF THE STATE OF TEXAS.  
FEDERAL I.D. 74-6001118; TEXAS TAXPAYER I.D. 35065065068**

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

*I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.*

sign here ▶	Purchaser 	Title VP and Chief Financial Officer	Date 2/2/2011
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NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

**THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.**

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do **not** send the completed certificate to the Comptroller of Public Accounts.

**EXHIBIT O**

**RIDER 1 QUALITY ASSURANCE**



## **RIDER 1 TO THE AGREEMENT**

### **Joint Commission**

**Quality Assurance.** By signing this Agreement, Contractor affirms, certifies, and warrants that by agreeing to provide the contracted services to The University of Texas MD Anderson Cancer Center, Contractor agrees to (a) comply with all applicable standards of the Joint Commission (b) implement and monitor a quality assurance process that complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to The University of Texas MD Anderson Cancer Center of a licensed independent practitioner's privileging file; and (e) provide The University of Texas MD Anderson Cancer Center with periodic reports of its quality assurance indicators and/or permit The University of Texas MD Anderson Cancer Center to conduct periodic quality assurance audits of Contractor's services as otherwise specified in this Agreement.