

ATTACHMENT A

DRAFT AGREEMENT BETWEEN
THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER
and
PROJECT SERVICES PROVIDER for
FACILITIES MASTER PLANNING SERVICES for
A PROJECT OF LIMITED SIZE OR SCOPE

MD Anderson Agreement No.:

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

The Owner: The University of Texas M. D. Anderson Cancer Center
c/o Sourcing and Contract Management
7007 Bertner Avenue, Suite 10.3212
Houston, Texas 77030

and

The Service Provider: _____

The Owner and the Service Provider agree as follows:

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND SERVICE PROVIDER

ARTICLE 1
SERVICE PROVIDER'S SERVICES

1.01 Service Provider agrees to perform the services specifically described in **Exhibit C**, and all other professional services reasonably inferable from Exhibit C and necessary for complete performance of Service Provider’s obligations under this Agreement (collectively, “Service Provider’s Services”). To the extent of any conflict between the terms in Exhibit C and this Agreement, the terms of this Agreement shall prevail.

ARTICLE 2
SERVICE PROVIDER'S RESPONSIBILITIES

2.01 Service Provider agrees to use Service Provider's best efforts, skill, judgment, and abilities so as to perform Service Provider's Services in an expeditious and timely manner

consistent with reasonable standards of care and the orderly progress of any Purchase Order authorized pursuant to this Agreement. Service Provider shall at all times provide a sufficient number of qualified personnel to accomplish Service Provider's Services in a timely manner. Service Provider shall manage its services, administer the Project and coordinate with other service providers as necessary for the complete performance of Service Provider's obligations under this Agreement.

2.02 Service Provider agrees 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.

2.03 Service Provider's Services shall be reasonably accurate and free from material errors or omissions. Service Provider shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by Service Provider without any additional cost or expense to Owner.

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

2.05 The Service Provider shall fully document its master plan activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Purchase Order. The Service Provider shall bear the cost of providing all plans, specifications and other documents used by the Service Provider and its consultants.

ARTICLE 3 SCOPE OF WORK

3.01 **In General:** The Service Provider agrees to provide facilities master planning services as requested by the Owner in accordance with the terms of this Agreement. The actual scope of services requested by the Owner may vary according to the Owner's specific requirements. In general, the anticipated scope of services for specific Purchase Orders may include, but are not necessarily limited to, those services described on **Exhibit E – Scope of Services**.

ARTICLE 4 THE OWNER'S RESPONSIBILITIES

4.01 The Owner shall provide the Service Provider with a full description of the requirements of the Project.

4.02 The Owner shall furnish surveys, reports or other information as requested by the Service Provider and as reasonably necessary for the completion of Service Provider's Services. The Owner shall furnish structural, mechanical, chemical and other laboratory tests as reasonably required.

4.03 The Owner will review the Service Provider's drawings, specifications and other documents of service produced by Service Provider in the performance of its obligations under this Agreement (collectively the "Deliverables") as required. Owner will notify Service Provider of any fault or defect in Service Provider's Services or Deliverables of which Owner becomes aware.

4.04 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Service Provider's Services.

4.05 The Owner designates Facilities Management as its representative authorized to act in the Owner's behalf with respect to the Project. The Owner designates the Vice President and Chief Facilities Officer, Facilities Management or his designee as its representative for the purpose of administering this contract.

ARTICLE 5 OWNERSHIP AND USE OF DOCUMENTS

5.01 The Deliverables prepared by Service Provider as instruments of service are and shall remain the property of the Service Provider whether the work for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Deliverables for information and reference in connection with the Owner's use. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Deliverables and the ideas and designs contained in them for any purpose, with or without participation of the Service Provider.

5.02 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 6 DISPUTE RESOLUTION

6.01 To the extent that Chapter 2260 of the Texas Government Code ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, by Owner and Service Provider to attempt to resolve any claim for breach of contract made by Service Provider. All Service Provider contract claims must be submitted in accordance with the procedures and requirements of Chapter 2260, the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

5.02 In accordance with Chapter 2260, the Owner designates Dwain Morris, Vice President, C.F.O., as its representative for the purpose of reviewing Service Provider's claim(s) and negotiating with Service Provider in an effort to resolve such claim(s).

ARTICLE 7 PROJECT TERMINATION OR SUSPENSION

7.01 This Agreement may be terminated by either party upon seven 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 in the seven day notice period. This Agreement may be terminated by the Owner for any reason upon 15 days written notice to Service Provider.

7.02 In the event of termination through no fault of the Service Provider, Service Provider shall be equitably compensated for all Service Provider Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.01 Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between Service Provider and Owner and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

8.02 Assignment. 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.

8.03 Applicable Law. This Agreement shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without regard for choice of law principles.

8.04 Waiver. A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.

8.05 Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.

8.06 Independent Contractor. Service Provider recognizes that Service Provider is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Service Provider or its employees with any benefits normally associated with employee status. Service Provider will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner.

8.07 Family Code Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, 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.

8.08 Eligibility Certification. Pursuant to Section 2155.004, *Texas Government Code*, Service Provider 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.

8.09 Tax Certification. If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code (“Chapter 171”), Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of such taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

8.10 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

8.11 Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Service Provider in the performance of services for Owner, which is not generally known to the public, shall be confidential and Service Provider shall not disclose any such confidential information, unless required by law. Service Provider shall not announce or advertise its engagement by Owner in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner.

8.12 Ethics Matters/No Financial Interest. Service Provider and its employees, agents, representatives and subcontractors have read and understand Owner’s Conflicts of Interest Policy available at <http://www.mdanderson.org/about-us/certifications-and-standards/compliance-program/conflict-of-interest-policy-no.-adm0255.pdf>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University’s Conflicts of Interest Policy, provisions described by University’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

8.13 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.

8.14 Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Facsimile notices are deemed effective on the first business day following the date the facsimile notice is received. Notices shall be sent to the following addresses:

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
Operations and Facilities Management
6900 Fannin, Suite 11.1022
Houston, Texas 77030

And

Chief Legal Officer
Legal Services, Unit 0537
1515 Holcombe Blvd.
Houston, Texas 77030

If to Services Provider:

ARTICLE 9 DIRECT SALARY EXPENSE

9.01 Direct Salary Expense (“DSE”) is defined as the actual salaries of the Service Provider’s personnel directly engaged on the Project, expressed on an hourly wage basis prior to deductions for employment taxes and employee-paid benefits. DSE shall not include the costs of mandatory and customary employer provided contributions and employee benefits, overhead expenses or profit relating to the Project. Any multiplier applied to the DSE shall be for the purpose of covering all employer provided contributions and employee benefits, overhead expenses, and profits.

9.02 Prior to commencing Service Provider’s Services, Service Provider shall identify all personnel who will be assigned to the Project along with their titles and DSE hourly wage.

ARTICLE 10 REIMBURSABLE EXPENSES

10.01 **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 Services Provider under this Agreement are limited to the following:

- a. 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 per the Owners Current Employee’s Travel Policy, **Rider 107**. The Travel Policy, Rider 107 is available at: www.mdanderson.org/pdf/procurement_trvl.pdf. This document is attached as **Exhibit J**.
- b. Fees paid for securing approval of authorities having jurisdiction over the Project.
- c. Professional models and renderings if requested by the Owner.
- d. Reproductions, printing, binding, collating, postage and shipping of reports, drawings, specifications and other project-related work directly and solely in support of the project.
- e. Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.
- f. Expense of any additional insurance coverage or limits, excluding professional liability and errors and omissions insurance, required under this Agreement or

requested by the Owner that is in excess of that normally carried by the Service Provider and the Service Provider's employees and consultants.

- g. 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.
- h. 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.
- i. Disbursements made by the Services Provider under approved subcontracts.

10.02 Compensation for Reimbursable Expenses: The Services 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 Services 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 reimbursables. 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 10.

10.03 **Proposal Costs Not Recoverable:** Services Provider is solely responsible for any expenses or costs, including expenditures of time, incurred by the Services 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 11 ADDITIONAL SERVICES

11.01 Additional Services are services not included in the Service Provider's Services and not reasonably inferable from Service Provider's Services. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. Prior to commencing any Additional Service, Service Provider shall prepare for acceptance by the Owner an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee for those services. Service Provider shall proceed to perform Additional Services only after written acceptance of the Additional Services Proposal by Owner.

11.02 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Service Provider pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

ARTICLE 12
PAYMENTS TO SERVICE PROVIDER

12.01 Monthly Invoices: Services 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. Services 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.

12.02 Limited to Maximum Contract Sum: It is the responsibility of Services Provider not to provide services or submit invoices that exceed the maximum contract sum. Services provided, and/or expenses incurred that exceed the maximum contract sum without Owner's written consent will be at Services Provider's financial risk and Owner shall not be obligated to pay for any such services or expenses.

12.03 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.

12.04 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

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

- a. Services 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 Services Provider's invoices exceed the maximum contract sum;
- d. Services 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 Services Provider;
- e. Services 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.

12.06 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 Services Provider's obligations or liabilities with respect to such services.

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

12.08 Final Payment and Release: The acceptance by Services Provider or Services 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 Services Provider or Services Provider's successors have or may have against Owner pursuant to this Agreement except those claims specifically identified in writing by Services Provider as unsettled at the time of the final request for payment.

ARTICLE 13 SERVICE PROVIDER'S ACCOUNTING RECORDS

13.01 Records of Service Provider costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Service Provider in writing. Service Provider's records shall be kept on the basis of generally accepted accounting principles.

ARTICLE 14 SERVICE PROVIDER'S COMPENSATION

14.01 Compensation: The Service Provider's Compensation for Service Provider's Services shall be described as Cost-Not-To-Exceed, time and materials, using the Salary Rates

described in **Exhibit A, Service Provider's Schedule of Billing Rates**. The maximum contract sum shall not exceed _____ Dollars (\$_____.00).

14.02 Fees: Allowable fees 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.

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

14.04 Scheduled Billing Fees: 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.

14.05 Basic Services: For Basic Services rendered in connection with any Purchase Order 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 Owner's Purchase Order, up to the maximum "Not to Exceed" amount approved in Owner's Purchase Order.

14.06 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 scope of services authorized by this Agreement, Service Provider shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with the Owner's Purchase Order, up to the maximum "Not to Exceed" amount approved in Owner's Purchase Order. Prior to commencing any Additional Service, 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 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 Service Provider is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. Service Provider shall proceed only after written acceptance by Owner of the Additional Services Proposal.

14.07 Consultant Costs: Unless approved in advance by the Owner, Service Provider shall pay for all consultant services and costs associated with its 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.

14.08 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.

14.09 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.

14.10 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 15 INSURANCE

15.01 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.

- (iv) Professional Liability Insurance: The Services Provider shall carry such professional liability and errors and omissions insurance covering the services provided by the Services 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 Services Provider. The minimum coverage amount shall be **ONE MILLION DOLLARS (\$1,000,000.00)**.

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

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

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

ARTICLE 16 INDEMNITY

16.01 The Services 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 Services Provider, its employees, agents and/or assigns.

ARTICLE 17 DISPUTE RESOLUTION

17.01 Government Code Chapter 2260 Controls: Services 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 Services Provider's claims is governed by rules adopted by the Texas Attorney General at 1 Tex. Admin. Code, Chapter 68, as currently effective or subsequently amended.

17.02 Owner's Representative: The Owner designates Dwaine Morris, Vice President, Chief Financial Officer, as its representative in dispute resolution procedures.

ARTICLE 18 HISTORICALLY UNDERUTILIZED BUSINESSES

18.01 The Owner has adopted **Exhibit H, Policy on Utilization of Historically Underutilized Business ("Policy")**, which is incorporated herein by reference. Services 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 Services Provider's Proposal. No changes to the HUB Subcontracting Plan can be made by the Services Provider without the prior written approval of the Owner in accordance with the Policy. 18.02 MD Anderson's expenditures under this Agreement will exceed \$100,000. Contractor has submitted a plan for the utilization of Historically Underutilized Businesses ("HUB") in accordance with MD Anderson's requirements. All HUB forms are attached hereto as Exhibit H. Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on MD Anderson; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Texas Government Code*, and 34 *Texas Administrative Code* ("TAC") Chapter 20, §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by MD Anderson.

18.03 Contractor agrees to maintain business records documenting its compliance with the HUB Subcontracting Plan ("HSP") and to submit a monthly compliance report to MD Anderson in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, "TPASS"). Submission of compliance reports will be required as a condition for payment under this Agreement.

18.04 Changes to the HSP. If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by MD Anderson; and (c) if MD Anderson approves changes to the HSP, this Agreement must be amended to replace the HSP with the revised subcontracting plan. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under the Agreement, in whole or in part.

18.05 Expansion of the Work. If MD Anderson expands the scope of the goods or services provided by Contractor under this Agreement through a change order or any other amendment, MD Anderson will determine if the additional goods or services contain probable subcontracting opportunities not identified in the initial solicitation for this Agreement. If MD Anderson determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional goods or services; or (b) Contractor may perform the additional goods or services. If Contractor subcontracts any of the additional subcontracting opportunities identified by MD Anderson without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. MD Anderson may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Chapter 20, §§20.101 – 20.108.

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The Owner and Services Provider have entered into this Agreement as of the Effective Date.

BY SIGNING BELOW, the Contractor has executed and bound itself to this Agreement as of the day of the 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 the Owner to the Contractor. Only Supply Chain Management is authorized to award official agreements and issue Purchase Orders binding Owner.

SEAL:

[Contractor's Name]

WITNESS:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

CONTENT APPROVED:

THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER
(Owner)

Facilities Management
VP Office

By: _____
(original signature)

By: _____
(original signature)

Name: Spencer Moore
Title: VP and Chief Facilities Officer

Name: _____
Title: _____

Date: _____

Date: _____

EXHIBITS

Exhibit A - Services Provider's Schedule of Billing Rates
Exhibit B - Authorization to Commence Work
Exhibit C - Initial Project / or Additional Services Proposal
Exhibit D - Pay Application
Exhibit E - Scope of Services
Exhibit F - Rider 105, Contractor's Affirmations and Warranties
Exhibit G - Rider 106, Premise Rules
Exhibit H - Policy on Utilization of Historically Underutilized Business
Exhibit I - Attachment 1 to Exhibit H - HUB Subcontracting Plan
Exhibit J - Rider 107, Travel Policy
Exhibit K - Execution of Offer
Exhibit L – Rider 117 – Institutional Policies
Exhibit M - Rider 1 to the Agreement

ATTACHMENT A

EXHIBIT A

SERVICES PROVIDER'S SCHEDULE OF BILLING RATES

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 _____

Date: _____

To: (State name and address of Services 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 ("Services 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 Services 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 Services 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 Services Provider is authorized to proceed.

MD Anderson Cancer Center

By: _____

Name: _____

Title:

AGREEMENT AUTHORIZATION SUMMARY

ORIGINAL MAXIMUM CONTRACT SUM \$ _____
(Refer to Art. 13 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: Services Provider
Project Manager
Accounting Manager
Central File

EXHIBIT C

INITIAL PROJECT / OR [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)

Project Number: _____

Project Name: _____

Campus: _____

Date: _____

To: CPM Project Manager: _____

Street Address: _____

City, State, Zip: _____

From: Services Provider: _____

Street Address: _____

City, State, Zip: _____

SERVICES PROVIDER

Please refer to the Agreement dated _____, 20__ between MD Anderson Cancer Center ("Owner") and the undersigned ("Services Provider") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which Services 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 Services Provider deems to be Initial Project [Additional] Services.

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

2. Services 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. Services Provider will perform the services no later than _____,
20__ (_____) days after Services 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.

Services 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__. Services Provider is authorized to commence performance of the Initial Project [Additional] Services on _____ day of _____, 20__.

Project Manager

By: _____

Name: _____

Title: _____

xc: Project Manager
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 13 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	\$ _____ 0

(ATTACH ALL SUPPORTING INVOICES)

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

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

By: _____
Master Planning Services Agreement

Date: _____
MDA ver 2013 02 06

Title:	(Signature of Authorized Agent of Service Provider)	Date:
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AUTHORIZATION		
By:		Date:
	(/PM)	
By:		Date:
	(Director)	

EXHIBIT E

SCOPE OF SERVICES

OBJECTIVE

The University of Texas M. D. Anderson Cancer Center last updated its institutional Master Plan in 2005 (Master Plan 2015). Since that time, several strategic studies have been conducted, and over 8,000,000 SF of additional building space has been constructed (total over 15,000,000 SF). The objective of this effort is to analyze the current state of facilities, assess service expansions based on internal and external data sets and establish strategies for positioning those services, develop recommendations for leadership approval, and bring the institution's published Facilities Master Plan up to date in support of future direction and needs.

Owner may negotiate a specific scope of work and fee for each phase of master planning services on an as-needed basis, as determined at the sole discretion of Owner and in accordance with the terms and conditions of the Agreement. Specific Purchase Orders may vary in timing, complexity, and dollar-value. Funding approval may vary based on scopes of service that have received funding approval, funding approval that is pending, and funding approval that is anticipated at a future date. Upon the successful negotiation of a specific scope of service and fee, the Owner will issue a separate Purchase Order and Notice to Proceed for that specific scope of service. As the Service Provider completes the proposed scope of service, the Service Provider will invoice the Owner according to the terms and conditions of the Agreement.

SCOPE OF SERVICES

MD Anderson Cancer Center is a very dynamic organization. The introduction of the "Moonshots" program – cancermoonshots.org - has resulted in dramatic changes to the research program and forecasted need for space. In turn, it is anticipated that the "Moonshots" will also result in increased patient care activities, including new patients, screening volumes, as well as their associated downstream services. In order to address these and other ongoing developments, a comprehensive master plan is being launched, which will address all aspects of MD Anderson's mission – patient care, research, academic and prevention. Further, all sites, both currently owned as well as future acquisitions will be included as a part of this program. Metrics will be the ultimate driver for space including clinical volumes, patient census, student population, research Principal Investigators and staffing.

This effort incorporates all mission areas at all MD Anderson Houston, Smithville, and Bastrop site locations, including Regional Care Centers in the Houston vicinity.

Currently MD Anderson's space allocation is divided by mission area as follows:
Clinical Operations and Programs (Patient Care and Prevention): Approx. 3,400,000 SF
Academic and Research (Research and Education): Approx. 2,700,000
Business and Administration (Business and Regulatory Affairs): Approx. 1,300,000 SF

Auxiliaries, building support/core and parking comprise the remaining 7,600,000 SF (3,000,000 SF parking)

The general scope of work shall include, but not necessarily be limited to:

STRATEGIC VISION, GUIDING PRINCIPALS, AND ASSOCIATED METRICS

1. Outline of the Strategic Vision of M. D. Anderson's institutional leadership and how the Master Plan will support it.
2. Identification and documentation of key strategic drivers for future institutional planning through interviews with numerous stakeholders and institutional administration. Owner furnished materials to support this effort will include:
 - The current Master Plan 2015 to be updated.
 - The most recent master planning efforts for North, Mid, and South Campuses
 - Development plans for Smithville and Bastrop
 - Metrics outlining anticipated institutional growth based on the MD Anderson's Economic Forecasting Model (EFM) and Resource Planning Matrix (RPM).
 - Information on MD Anderson owned and/or operated sites, including Regional Care Centers, Smithville and Bastrop sites, vacant sites for future development, etc.
 - Most recent traffic studies available.
 - Other master planning or planning studies that have been developed in recent years as applicable.
3. Based on discussion with other institutional consultants currently analyzing the potential impacts of governmental changes to the healthcare delivery model, outline the projected issues that will impact Facilities Planning for the future.
4. Perform a thorough market/competitive assessment and evaluate future needs based on macro-environmental trends in healthcare delivery and local market competitive landscape, and develop a service distribution/system development model (across Houston) to best position MD Anderson in the next decade.
5. Outline strategic initiatives regarding business incubation and technology commercialization.
6. Establish of guiding principles and highest priorities, based on metrics governing future planning expectations.
7. Delineation of the major planning issues confronting the institution in the 5, 10, and 15 year timeframes.

SITE ANALYSIS, SYSTEM/NETWORK AND LAND DEVELOPMENT

1. Assessment of existing land and facilities, including analysis of site densities/capacities, limitations, utilities and infrastructure.
2. Review of deed, zoning, easement, and legal restrictions.
3. Green space strategies.
4. Recommendations for future land acquisition and development.
5. Specific metric-based recommendations for continued development of the North Campus, Mid Campus, South Campus, East Campus, West Houston, Smithville, Bastrop, and the Regional Care Center network.
6. Identification of existing and new utility and infrastructure needs, including IT to support future developments at all campus sites.

TRAFFIC, CIRCULATION, AND PARKING

1. Analysis of traffic volumes, roadways and bridges, including pedestrian circulation.
2. Analysis of alternative transportation venues, including shuttles, trams/trains/monorails/etc.
3. Analysis of logistical/materials handling and distribution options.
4. Determination of Parking options and strategies to meet future needs

FACILITIES PLANNING

1. Identification of high level functional adjacencies.
2. Analysis and recommendations for all mission areas with on-site/off-site options, including strategic analysis of Regional Care Centers.
3. Review amenities (Cafes, C-Stores, Dry cleaners, etc) and propose strategies to meet future needs.
4. Review of the specific need for animal space, including an analysis of the pros and cons of centralization vs. decentralization, housing breeders, and other alternative processes from current operations.
5. Recommendations for facilities to support business incubation and technology commercialization.
6. Analysis and recommendations for environmental strategies.
7. Exploration and development of various scenarios with associated pros and cons, leading to recommendations for future development of sites, including best usage, capacity, massing, and high level cost expectations. Raise alternate benchmarks, operational models, policies and procedures that could influence facilities as part of the exploration.

IMPLEMENTATION PLANNING

1. Prioritization, with 5, 10 and 15 year priorities.
2. Project development phasing plan/schedules.
3. General budget projections.

NEXT STEPS

1. Recommendations of specific areas for additional, detailed studies if needed.

DELIVERABLES

Pursuant to Article 5, the Deliverables prepared by Service Provider as instruments of service are and shall remain the property of the Service Provider whether the work for which they are created is executed or not. Deliverables are to be published in a final report in both hard copy and electronic forms, formatted to include:

- Purpose
- Institutional Mission Statement
- Background/History including current acreage and square footage
- Institutional Goals in 5, 10, and 15 year timeframes
- Existing conditions
- Planning drivers/metrics, expectations, and guiding principles

- Master planning concepts for all mission areas
- Outline of best future uses for all MD Anderson sites
- Regional Care Center Network development strategies in context with overall planning
- Traffic, circulation, and parking
- Utility and infrastructure requirements, including IT
- Short and long term recommendations for facilities
- Implementation timelines
- Budget estimates
- Next Steps

Format and Media

- a. Provide brief summaries and analyses that are “to the point” and use bullet statements or spreadsheet format (MS Excel) whenever possible in lieu of paragraph format to simplify or clarify options and proposals.
- b. All final documents must be editable. Formats/media must be proposed by the service provider and approved by MD Anderson as suitable and compatible with MD Anderson owned software.
- c. Create a secure, virus protected file sharing site.
- d. Combine deliverables into an all inclusive package as follows:
 - o Hard copy : 8 ½ x 11 Qty: 4
 - o Electronic formatting – fully editable – in an MD Anderson approved software format
 - o Power Point Presentation
 - o CD/flash drive back-up

Timeframe: All deliverables are due to MD Anderson management on or before _____ 2013. Weekly status meetings with the MD Anderson project team are required.

Due to the diversity of the expertise and disciplines required, MD Anderson reserves the right to approve or reject Service Provider subcontractors.

ADDITIONAL SERVICES

Additional services that may be requested under this project scope include more detailed studies of specific sites, market analysis, investigation of new sites, real estate assessments, site testing, traffic studies, and additional associated budget estimates.

EXHIBIT F

RIDER 105, CONTRACTOR'S AFFIRMATIONS AND WARRANTIES

EXHIBIT G

RIDER 106, PREMISES RULES

EXHIBIT H

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

ATTACHMENT A

EXHIBIT I

ATTACHMENT 1 to EXHIBIT H

HUB Subcontracting Plan

EXHIBIT J

RIDER 107, TRAVEL POLICY

EXHIBIT K

EXECUTION OF OFFER

EXHIBIT L

RIDER 117 INSTITUTIONAL POLICIES

EXHIBIT M

RIDER 1 TO THE AGREEMENT