

AGREEMENT  
for  
MECHANICAL, ELECTRICAL AND PLUMBING (MEP) ENGINEERING SERVICES  
on  
MISCELLANEOUS MINOR PROJECTS OF LIMITED SCOPE  
for  
RESEARCH AND EDUCATION FACILITIES

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

This Agreement is made as of \_\_\_\_\_, 201\_\_ (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, Suite 10.3212  
   Houston, Texas 77030

and

The Engineer:                      \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

This Agreement is for the provision of miscellaneous mechanical engineering services, electrical engineering services, plumbing engineering services, or some combination thereof, for renovation, repair, minor construction and maintenance projects, and other miscellaneous engineering assignments (“Project(s)”) of limited scope, to be performed on a non-exclusive, indefinite quantity basis, as requested by Owner in accordance with the terms of this Agreement. Engineer represents that Engineer has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

Owner and Engineer agree as follows:

ARTICLE 1  
TERM OF AGREEMENT

1.01     **Initial Term:** The 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 this Agreement.

1.02     **Renewal Option:** Owner has the option to renew the term of this Agreement for three (3) successive twelve (12) month periods upon written notice to Engineer at least sixty (60) days prior to the expiration of the initial term or any subsequent renewal term.

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

## ARTICLE 2 MAXIMUM AUTHORIZED CONTRACT SUM

2.01 **Maximum Contract Sum:** The overall maximum value of this contract is indefinite, subject to the contractual authority delegated by The University of Texas System Board of Regents to Owner, which is set at \$5,000,000.. Allowable fees and expenditures for each specifically authorized Project will be set forth in a Purchase Order issued by Owner to Engineer. Invoices for authorized services performed by Engineer shall not exceed the amounts established for any portion of the authorized services. Established amounts shall not be increased except by mutual agreement between Owner and Engineer and confirmed by a revised Purchase Order issued by Owner to Engineer.

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

## ARTICLE 3 SCOPE OF SERVICES

3.01 **In General:** Engineer agrees to provide engineering and related technical services on a per-project basis as requested by Owner in accordance with the terms of this Agreement. These services are generally described as, but are not limited to, mechanical, electrical , plumbing (MEP) engineering services, or some combination thereof, for the renovation, alteration, repair or maintenance of Owner's research and education facilities, their related administrative office facilities, and their infrastructure systems or portions thereof. Services to be provided are expected to be those associated with mechanical engineering, electrical engineering, plumbing engineering, as well as their respective traditional sub-disciplines. Depending on the nature of the Project, needed services may include but will not necessarily be limited to:

- engineering design or conceptual design, including the preparation, or supervising and controlling the preparation, of drawings and specifications for a specific Project to renovate, alter, repair, or maintain Owner's facilities, associated infrastructure equipment or system, or a portion thereof ;
- engineering design coordination or conceptual design coordination to include the review and coordination of technical submissions prepared by others, including the work of other professionals working with or under the direction of Engineer or Owner for a specific Project with regard for the ability of each professional involved in the multidisciplinary effort;
- recommending and overseeing construction or maintenance project delivery systems appropriate to the nature of the Project;
- observing the renovation, alteration, repair or maintenance construction or installation work to evaluate conformance with engineering plans and specifications;
- services associated with the assembly, review and acceptance of operating or maintenance manuals;

- consultation, investigation, evaluation, analysis, planning, engineering for program management, providing expert opinions, completing studies and providing technical reports, testing or evaluating materials for construction or other engineering use;
- consulting, investigating, and analyzing the design, form, materials, and construction technology to be used for the renovation, alteration, repair or maintenance of Owner's research and education facilities and providing expert opinion as necessary;
- any other service necessary for the planning, progress, or completion of any of the engineering services generally described above.

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

3.03 **Project RFP:**

3.03.1 Owner will prepare a Project Request for Proposal ("Project RFP") identifying the Project by describing, in general, the intended scope and character of the Project or assignment, the preliminary cost estimate (when appropriate and available), the schedule for the Project, the services to be provided by Engineer, and, when appropriate to the nature of the Project and services to be rendered, the maximum amount Owner is willing to pay to a contractor to complete the construction or installation work needed to complete the Project ("Construction Cost Limitation" or "CCL").

3.03.2 In lieu of issuing a Project RFP, Owner may elect to provide the initial scope definition by preparing the initial draft of the Project Proposal, a form for which is included as an Exhibit hereto, and submitting it to Engineer.

3.04 **Project Proposal:**

3.04.1 In response to a Project RFP, Engineer shall provide Owner with a written Project Proposal. The Project Proposal shall include the following:

- A narrative description of Engineer's understanding of the required scope of services;
- A detailed statement of the services to be provided by Engineer including, when appropriate to the nature of the project or assignment, whether each particular service is considered by Engineer to be a Basic Service or an Additional Service, and a list of deliverables;
- A description of particular phases of the scope of the services, if applicable;
- A Fee Proposal detailing:
  - the total fee for providing the Basic Services expressed as a "not-to-exceed" amount;
  - the total fee for providing Additional Services expressed as a "not-to-exceed" amount; and
  - the total estimated amount for Reimbursable Expenses;
- A proposed date to commence providing the services;
- A list of all consultants, persons and firms that Engineer proposes to use in the performance of Engineer's scope of services;
- A schedule of hourly billing rates for any consultants that Engineer proposes to use in the performance of Engineer's scope of services;
- A HUB Subcontracting plan, if required;
- Any qualifications or conditions applicable to the Project Proposal; and

- j. A summary statement of the amount of all previous Projects initiated under this Agreement as of the date of the Project Proposal.

3.04.2 For Projects for which Owner has prepared the initial draft of the Project Proposal as the means for providing the initial scope definition, Engineer shall clearly and conspicuously mark the draft Project Proposal and submit it to Owner for approval of any proposed modifications.

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

3.06 **Notice to Proceed:** Upon approval of a Project Proposal by Owner, Owner will issue a written Purchase Order to Engineer. Subsequent to or concurrent with the issuing of the Purchase Order, Owner will issue a written Notice to Proceed, which will authorize Engineer to begin rendering the services identified in the Project Proposal on the date specified in the Notice to Proceed. The Notice to Proceed will include the Purchase Order number specific to the Project.

#### ARTICLE 4 ENGINEER'S GENERAL SERVICES AND RESPONSIBILITIES

4.01 **Project Manager:** Engineer shall manage Engineer's services and administer any Project authorized pursuant to this Agreement. Engineer shall provide and/or coordinate all services necessary and reasonably inferable for the complete performance of any Project authorized pursuant to this Agreement.

4.02 **Standard of Care:** Engineer agrees to use its best professional efforts, skill, judgment, and abilities to perform Engineer'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. Engineer shall at all times provide a sufficient number of qualified personnel to fulfill Engineer's obligation to provide services within the time limits set forth in the Project schedule.

4.03 **Compliance with Laws:** Engineer shall endeavor to perform Engineer's services in compliance with all applicable national, federal, state, and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over a specific Project.

4.04 **Existing Conditions:** Engineer 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 Engineer by Owner, or any other party, that Engineer uses in rendering services for a specific Project.

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

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

4.07 **Representative:** Engineer shall designate a representative primarily responsible for Engineer's services under this Agreement. The designated representative shall act on behalf of Engineer with respect to all phases of Engineer's services and shall be available as required for the benefit of any Project and Owner. The designated representative shall not be changed without prior approval of Owner, which approval shall not be unreasonably withheld.

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

4.09 **Owner's Design Guidelines and Master Construction Specification:** Unless otherwise expressly approved by Owner's Executive Director of Facilities Planning, Design and Construction, for each Project implemented under this Agreement Engineer shall adhere to requirements set forth in Owner's Design Guidelines and Master Construction Specifications in effect as of the date Owner issues the Project RFP to Engineer.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

5.01 **Project Scope Definition:** Generally, as provided above, for each Project Owner will initiate the Project scope definition process by submitting a Project RFP to Engineer.

5.02 **Representative:** In the Project RFP, Owner will designate an individual to serve on Owner's behalf as the administrator for the Project. Owner designates and authorizes its Executive Director of Facilities Planning, Design and Construction, or her or his designee, as Owner's representative for the purpose of administering this Agreement.

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

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

5.05 **Administrative Services:** Owner shall furnish all legal, accounting, auditing and insurance counseling services that it requires for each Project to be implemented under this Agreement and for the administration of this Agreement.

5.06 **Review of Services:** Owner will review Engineer'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 Engineer in a reasonably prompt manner. Owner will notify Engineer in writing of any material error or omission or other defect in the services or documents provided or any conflict in the documents of which Owner becomes aware, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

5.07 **Time for Response:** Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Engineer's services and of the work associated with a specific Project.

## ARTICLE 6 ACCEPTANCE OF SERVICES

6.01 **Owner's Satisfaction:** All services provided for a Project being implemented under this Agreement shall be completed to the satisfaction of Owner's representative designated for that Project. Owner's representative shall decide all questions regarding Engineer's performance under this Agreement as it relates to that Project and such decisions shall be final and conclusive.

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

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

## ARTICLE 7 COMPENSATION FOR SERVICES RENDERED

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

7.02 **Scheduled Billing Rates:** Attached as an Exhibit, and incorporated herein, is Engineer'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 Engineer 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 terms.

7.03 **Basic Services:** For Basic Services rendered in connection with any project authorized pursuant to this Agreement, Engineer shall be compensated as follows:

7.03.1 For Projects for which Owner establishes to a Construction Cost Limitation, Owner shall compensate Engineer an amount equal to the CCL times an agreed fee percentage, with said agreed fee percentage being as proposed by Engineer in the Project Proposal and accepted by Owner but no greater than the maximum fee percentage allowed as set forth in the Architect/Engineer Fee Schedule included as an Exhibit hereto.

7.03.2 For Projects for which Owner does not establish a CCL, Engineer shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Engineer's Project Proposal, up to the maximum "not-to-exceed" amount approved in Engineer's Project Proposal and as confirmed in the subsequent Purchase Order issued by Owner to Engineer.

7.04 **Additional Services:** Additional Services are services not identified or reasonably inferable as Basic Services included in a Project Proposal. Additional Services shall be provided only if authorized or confirmed in writing by Owner. For approved Additional Services provided in connection with any Project implemented pursuant to the terms of this Agreement, Engineer shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Engineer's Additional Services Proposal, up to the maximum "not-to-exceed" amount approved in Engineer's Additional Services Proposal, as confirmed in the subsequent revised Purchase Order issued by Owner to Engineer.

7.05 **Consultant Costs:** Unless approved in advance by Owner, Engineer shall pay for all consultant services and costs associated with Engineer's services under this Agreement, whether Basic Services or Additional Services, out of Engineer'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 Services and Additional Services. These include actual out-of-pocket reasonable expenditures made by the Engineer and the Engineer's employees and consultants incurred solely and directly in connection with Engineer's performance of its services hereunder. Reimbursable Expenses recoverable by Engineer under this Agreement are limited to the following:

- a. Expenses in connection with out-of-state travel, including coach class air fare and reasonable living expenses, as directed and approved in advance and in writing by Owner. Said expenses to be reimbursed per Owner's Rider 107, Travel Policy, a copy of which is included as an Exhibit hereto;
- b. Expenses in connection with in-state travel, including reasonable travel and living expenses, for Engineer's employees and consultants when a Project is located more than 50 miles from the place where they are usually and customarily assigned, but only as directed and approved in advance and in writing by Owner. Said expenses to be reimbursed per Owner's Rider 107, Travel Policy, a copy of which is included as an Exhibit hereto;
- c. Fees paid for securing approval of authorities having jurisdiction over a particular Project;
- d. Expenses of reproductions, printing, collating, postage and handling of drawings, specifications, reports and other documents or other Project related work product, but excluding plotting costs of drawings, reproductions for the use of Engineer and Engineer's consultants as well as up to three (3) review sets as necessary for progress reviews by Owner in accordance with the Project Proposal.
- e. Communication expenses such as long distance telephone, facsimile transmissions, express delivery charges and postage that are directly attributable to a particular Project;
- f. Disbursements made by Engineer under approved subcontracts if approved in advance and in writing by Owner;
- g. Reasonable costs for rental or use of special equipment, tools, and electronic data processing equipment required in connection with a particular Project if approved in advance and in writing by Owner;

- h. Expense of any additional insurance coverage or limits, requested by Owner but excluding professional liability and errors and omissions insurance required under this Agreement, that exceed those normally carried by Engineer and Engineer's consultants;
- i. Expenses not allowed for reimbursement include alcoholic beverages, laundry, valet service, entertainment and any expenses not directly related to the implementation of a specific Project. All tips must be included within the per diem allowances.

**8.02 Compensation for Reimbursable Expenses:** Engineer 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 Engineer's services and duties under this Agreement or in the interest of any particular Project. Engineer shall submit receipts for all 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, Engineer shall not invoice Owner for any Reimbursable Expense which is not expressly listed in this Article.

**8.03 Proposal Costs Not Recoverable:** Engineer is solely responsible for any expenses or costs, including expenditures of time, incurred by Engineer 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 REQUESTS FOR PAYMENT

**9.01 Monthly Statements:** Unless Owner and Engineer expressly agree otherwise, for each Project implemented under this Agreement Engineer shall submit a monthly record or statement of services rendered under this Agreement identifying all fees earned and Reimbursable Expenses incurred in the previous month. Statements shall be submitted in a format approved by Owner and must contain at least the following information:

- a. Owner's Project Name and Owner's Project Number;
- b. Owner's Agreement Number;
- c. Owner's Purchase Order Number;
- d. Engineer's Tax Identification Number;
- e. Name of Owner's Project Representative;
- f. Identification of billing period, by calendar month, to which the statement applies;
- g. 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;
- h. Completion status of Project by percentage;
- i. Total amount of payment requested;
- j. Total amount of prior requests for payment and Purchase Order Amount;
- k. Copy of all receipts in support of any Reimbursable Expenses for which Engineer requests compensation.

**9.02 Limited to Owner's Purchase Order Amount:** For each Project, it is the responsibility of Engineer not to provide services or submit requests for payment that exceed Owner's Purchase Order Amount. Services provided, and/or expenses incurred that exceed Owner's Purchase Order Amount will



be at Engineer's financial risk and Owner shall not be obligated to compensate Engineer for any such services or expenses.

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

**9.04 Submittal of Requests for Payment:** Requests for payment 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

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

- a. Engineer 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 on the balance of the services that are performed in accordance with this Agreement;
- c. The total of Engineer's requests for payment exceed Owner's Purchase Order Amount;
- d. Engineer 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 Engineer;
- e. Engineer 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 for a specific Project is insufficient to complete the services required under this Agreement for that Project.

**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 Engineer's obligations or liabilities with respect to such services.

**9.07 Prompt Payment by Engineer:** Engineer 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 Engineer or Engineer'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 Engineer or Engineer's successors have or may have against Owner pursuant to this Agreement except those claims specifically identified in writing by Engineer as unsettled at the time of the final request for payment.

## ARTICLE 10 ACCOUNTING RECORDS

10.01 Engineer 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 Owner or 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 Engineer'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 Engineer are instruments of service and shall remain the property of Engineer. Owner shall be permitted to retain copies, including reproducible copies, of all documents prepared by Engineer for information and reference in connection with 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 for which they were developed, regardless of Engineer involvement. The documents shall not be used by Owner or Engineer 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 Engineer's rights.

## ARTICLE 12 TERMINATION

12.01 **Termination for Cause:** This Agreement, any Project being implemented pursuant to the terms of this Agreement, or both 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. If a termination for cause under this section is later determined to be improper, the termination shall automatically convert to a termination for convenience under section 12.02 and Engineer's recovery for termination shall be strictly limited to the compensation allowable under section 12.03.

12.02 **Termination for Convenience:** This Agreement, any Project being implemented pursuant to the terms of this Agreement, or both may be terminated for convenience by Owner in whole or in part, upon at least ten (10) days' written notice to Engineer.

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

## ARTICLE 13 DISPUTE RESOLUTION

13.01 To the extent that it is applicable, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code (“Chapter 2260”) shall be used by Engineer to resolve any claim for breach of contract made by Engineer that is not resolved in the ordinary course of business between Engineer and Owner.

13.02 Alternative Dispute Resolution Process. Owner may establish a dispute resolution process to be utilized in advance of that outlined in Chapter 2260.

13.03 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner’s right to seek redress on any disputed matter in a court of competent jurisdiction.

13.04 In any litigation between Owner and Engineer arising from this Agreement or any Project implemented pursuant to the terms of this Agreement, neither party will be entitled to an award of legal fees or costs in any judgment regardless which one is deemed the prevailing party.

13.05 Nothing herein shall waive or be construed as a waiver of the State’s sovereign immunity.

13.06 Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Engineer, in whole or in part. Owner and Engineer agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

13.07 In accordance with Chapter 2260, Owner designates its Chief Financial Officer as its representative for the purpose of reviewing Engineer’s claim(s) and negotiating with Engineer in an effort to resolve such claim(s).

## ARTICLE 14 INSURANCE

14.01 **Coverage:** Engineer shall carry such professional liability (errors & omissions) insurance, covering the services provided under this Agreement and other coverages as further described, acceptable to and approved by the Owner. The cost for such insurance will be at Engineer’s sole expense, which shall not be considered a Reimbursable Expense. The insurance policy shall remain in force for a period of five (5) years beyond the final completion date of the last Project implemented under this Agreement. A Certificate of Insurance indicating the expiration date, and existence, of Engineer’s insurance coverages is required prior to commencement or continuation of performance of the services under this Agreement. Each request for payment by Engineer shall include the expiration date of the insurance. Engineer shall deliver to Owner replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, Engineer fails to pay any of the renewal premiums for the expiring policies, Owner shall have the right (but not the obligation) to make such payments and set off the amount thereof against the next payment coming due to Engineer under this Agreement.

14.01.01 Professional Liability (Errors & Omissions) Insurance shall have limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance shall cover all professional services rendered by or on behalf of Engineer and its consultants under the Agreement. Renewal policies written on claims-made basis will maintain the same retroactive date as is in effect at the inception of this

Agreement. If coverage is written on a claims-made basis, Engineer agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two years after the expiration or cancellation of the policy.

- 14.01.02 On Site Insurance: For services performed on Owner's premises, Engineer 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.

Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
Commercial General Liability	\$1,000,000 each occurrence \$2,000,000 aggregate
Business Auto Liability	
Combined Single Limit	Single Limit of \$1,000,000 each accident for owned, non-owned and hired vehicles

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

14.02 Engineer shall include Owner as an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.

## ARTICLE 15 INDEMNITY

15.01 Engineer 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 Engineer, its employees, agents and/or assigns.

## ARTICLE 16 HISTORICALLY UNDERUTILIZED BUSINESSES

16.01 Owner has adopted its Policy on Utilization of Historically Underutilized Businesses ("Policy"), which is included as an Exhibit hereto. Engineer, as a material provision of this Agreement, must

comply with the requirements of the Policy and submit a HUB Subcontracting Plan for owner's approval for each Project for which Engineer's total compensation is to be \$100,000 or more. Engineer shall adhere to each approved HUB Subcontracting Plan. No changes to an approved HUB Subcontracting Plan can be made by Engineer without the prior written approval of Owner in accordance with the Policy.

All HUB forms are attached hereto as Rider 104. 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.

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.

**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 in accordance with Section 2 of Rider 103 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.

**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 under Section 19 of Rider 103 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.

#### ARTICLE 17 MISCELLANEOUS PROVISIONS

**17.01 Appointment of Representative:** Owner will designate a representative to act partially or wholly for Owner in connection with this Agreement, as well as a representative to act on Owner's behalf for each Project being implemented under this Agreement. Engineer shall coordinate its services for a particular Project solely through the representative designated by Owner for that Project.

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

17.03 **Confidentiality:** Engineer 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 Owner in writing.

17.04 **Successors and Assigns.** Owner and Engineer, 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 Engineer, and Engineer'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:** Engineer agrees not to subcontract any part of the services to be rendered hereunder without the prior written consent of Owner. If subcontracting is permitted, Engineer must identify the subcontractor(s) to Owner prior to any subcontractor beginning work. Submission and approval of a Historically Underutilized Businesses (HUB) Subcontracting Plan is considered consent under this Article.

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"), or both. 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 Engineer and Owner may terminate this Agreement or any Project being implemented pursuant to the terms of this Agreement without further duty or obligation hereunder. Engineer 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 Engineer 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*, Engineer 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.** If Engineer is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Engineer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Engineer is exempt from the payment of such taxes, or that Engineer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

17.10 **Payment of Debt or Delinquency to the State:** Pursuant to Sections 2107.008 and 2252.093, *Texas Government Code*, Engineer agrees that any payments owing to Engineer under this Agreement may be applied directly toward any debt or delinquency that Engineer 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. Engineer shall avail itself of all tax exemptions applicable to Engineer's services or expenses.

17.12 **Eligibility Certification.** Pursuant to Section 2155.004, *Texas Government Code*, Engineer 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.

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 **Ethics Matters/No Financial Interest.** Engineer and its employees, agents, representatives, subcontractors and consultants have read and understand Owner's Conflicts of Interest Policy available at <http://www.mdanderson.org/about-us/compliance-program/conflict-of-interest-policy-no.-adm0255.pdf>, Owner's Standards of Conduct Guide available at <http://www.mdanderson.org/about-us/compliance-program/do-the-right-thing.pdf>, and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/ethics). Neither Engineer nor its employees, agents, representatives subcontractors, or consultants will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules. Engineer 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.

17.20 **179 D Benefit Allocation.** Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the "Code") through this Agreement with Engineer.

17.20.1 If the Owner and the Internal Revenue Service (IRS) determine that the Engineer is eligible to receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that Engineer could otherwise profit financially from the monetization of the

benefit (separately and collectively, the “Rebate”), Engineer hereby agrees to allocate to Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by Owner and Engineer. At its sole discretion, Owner shall determine whether to receive its portion of the Rebate in cash, discounted Engineer fees or both.

17.20.2 Owner reserves the right to retain a third party consultant (the “Consultant”) to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s).

17.20.3 Project Engineer agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner’s 179D Consultant.

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

## 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 Engineer 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:

Chris McKee  
Vice President, Business Operations  
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

If to Engineer:

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Balance of page intentionally left blank. Signature page follows.

BY SIGNING BELOW, Engineer has executed and bound itself to this Agreement upon the execution of the Agreement by both parties. No modification, alteration or waiver of this Agreement or any of its provisions shall be effective unless in writing and signed by both parties. Substantive changes in the services generally to be provided by Engineer under this Agreement shall become effective only upon the execution of a written Amendment to this Agreement. Substantive changes in the services to be provided by Engineer or the compensation to be paid to Engineer for any Project implemented pursuant to the terms of this Agreement shall become effective only upon the issuance of a revised Purchase Order by Owner to Engineer. Only duly authorized representatives of Owner's Division of Supply Chain Management are authorized to award official agreements, execute amendments to this Agreement and issue Purchase Orders to bind Owner for any Project implemented pursuant to the terms of this Agreement.

SEAL:

[Engineer's Name]

WITNESS:

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

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

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

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

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

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

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

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

CONTENT APPROVED:

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

Office of Vice President  
Operations and Facilities Management

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

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

Name: Spencer Moore

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

Title: Vice President for Operations and Facilities  
Management

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

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

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

## EXHIBITS

Exhibit A -	Architect/Engineer Fee Schedule
Exhibit B -	Engineer's Schedule of Billing Rates
Exhibit C -	Project Request for Proposal Form
Exhibit D -	General Project Proposal Form
Exhibit E -	Design Project Proposal Form
Exhibit F -	Additional Services Proposal Form
Exhibit G -	Notice to Proceed Form
Exhibit H -	Statement of Services Rendered Form
Exhibit I -	Rider 104B, Policy on Utilization of Historically Underutilized Businesses
Exhibit J -	Engineer's Letter of HUB Commitment
Exhibit K -	Rider 105, Contractor's Affirmations and Warranties
Exhibit L -	Rider 106, Premises Rules
Exhibit M -	Rider 107, Travel Policy
Exhibit N -	Rider 117, Institutional Policies
Exhibit O -	Owner's Sales Tax Exemption Certificate
Exhibit P -	Execution of Offer

**Exhibit A**

**Architect/Engineer Fee Schedule**

**Exhibit B**

**Engineer's Schedule Of Billing Rates**

**Exhibit C**

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**Exhibit H**

**Statement of Services Rendered Form**

**Exhibit I**

**Rider 104B, Policy on Utilization of Historically Underutilized Businesses**

**Exhibit J**

**Engineer's Letter of HUB Commitment**

**Exhibit K**

**Rider 105, Contractor's Affirmations and Warranties**

**Exhibit L**

**Rider 106, Premises Rules**

**Exhibit M**

**Rider 107, Travel Policy**



**Exhibit N**

**Rider 116, Invoice Payment Requirements**

**Exhibit O**

**Rider 117, Institutional Policies**

**Exhibit P**

**Owner's Sales Tax Exemption Certificate**

**Exhibit Q**

**Execution of Offer**