

# ATTACHMENT A

## DRAFT AGREEMENT

for

### BUILDING AUTOMATION SERVICES

on

### PROJECTS OF INDEFINITE SCOPE

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

This Agreement is made as of \_\_\_\_\_, 2020 (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 11.2339  
                          Houston, Texas 77030  
                          713-745-8300

and

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

This Agreement is for the provision of Building Automation Systems consulting services for projects of indefinite scope, to be performed on a non-exclusive, indefinite quantity basis, as requested by the Owner in accordance with the terms of this Agreement. Services Provider represents that Services Provider has the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement.

The Owner and the Services Provider agree as follows:

## ARTICLE 1 TERM OF AGREEMENT

**1.01 Initial Term:** This initial term of this Agreement shall begin on the effective date and shall expire **thirty-six** (36) months after that date unless renewed or terminated in accordance with the terms of the Agreement.

1.02 **Renewal Option:** The Owner has the option to renew the term of this Agreement for two (2), successive twelve (12) month periods upon written notice to the Services Provider at least sixty (60) days prior to the expiration of the initial or any subsequent term.

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

## ARTICLE 2 MAXIMUM AUTHORIZED CONTRACT SUM

2.01 **Maximum Contract Sum:** The total, maximum, not-to-exceed amount of money authorized for payment to Services Provider for services provided pursuant to this Agreement will be project specific and the amount will be determined at the time the project is proposed. Total billings for authorized work performed by the Services Provider shall not exceed this maximum contract sum. The maximum contract sum shall not be increased except by written amendment to this Agreement executed by the Owner and the Services Provider.

2.02 **No Minimum Amount of Work:** Owner makes no representations regarding the amount or type of services, if any, that Services 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 Services 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.

## ARTICLE 3 SCOPE OF SERVICES

3.01 **In General:** The Services Provider agrees to provide technical services on a per-project basis as requested by the Owner in accordance with the terms of this Agreement. These services are generally described as, but are not limited to, the services described in Exhibit E – Scope of Services.

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

3.03 **Project RFP:** The Owner will prepare a Project Request for Proposal (“Project RFP”) identifying the project and describing, in general, the intended scope and character of the project, the preliminary cost estimate and schedule for the project, and the basic services to be provided by the Services Provider for the project.

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

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

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

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

## ARTICLE 4

### SERVICES PROVIDER'S GENERAL SERVICES AND RESPONSIBILITIES

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

**4.02 Standard of Care:** Services Provider agrees to use its best professional efforts, skill, judgment, and abilities to perform Services Provider's services in an expeditious and timely manner as is consistent with professional standards of care and the orderly progress of any project

authorized pursuant to this Agreement. Services Provider shall at all times provide a sufficient number of qualified personnel to accomplish Services Provider's services within the time limits set forth in the schedule.

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

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

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

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

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

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

## ARTICLE 5 THE OWNER'S RESPONSIBILITIES

**5.01 Project Program:** The Owner shall provide a Project RFP setting forth the Owner's description of the project scope; preliminary project budget; schedule; objectives,

characteristics and constraints; and a description of the basic services to be provided by the Services Provider for the project.

5.02 **Representative:** The Owner designates Pouyan Layegh, Director, Environmental Health & Safety, Sustainability and Emergency Management, as its representative authorized to act in the Owner's behalf with respect to the Project.

5.03 **Special Information:** The Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to the project. Owner shall furnish other special investigations of the Project site as requested by the Services Provider and as reasonably necessary for the Project. Services Provider shall exercise reasonable care in relying upon this information in the performance of its services under this Agreement. Owner makes no warranties or representations as to the accuracy or suitability of information provided to the Services Provider by the Owner or by others.

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

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

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

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

## ARTICLE 6 ACCEPTANCE OF WORK

6.01 **Owner's Satisfaction:** All work performed under this Agreement shall be completed to the satisfaction of the Owner's representative assigned to the project. The Owner's representative shall decide all questions regarding Services Provider's performance under the Agreement and such decisions shall be final and conclusive.

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

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

## ARTICLE 7 COMPENSATION FOR SERVICES RENDERED

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

7.02 **Scheduled Billing Rates:** Attached as **Exhibit A**, and incorporated herein, is Services 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 Services Provider shall not be entitled to any additional compensation for providing those services. The Schedule of Billing rates shall remain in full force and effect for the term of this Agreement, including all renewal periods.

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

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 the Owner. For approved Additional Services provided in connection with any project authorized by this Agreement, Services Provider shall be compensated on an hourly rate basis or on a per-service fee basis in accordance with Services Provider's Additional Services Proposal, up to the maximum "Not to Exceed" amount approved in Services Provider's Additional Services Proposal.

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

## ARTICLE 8 REIMBURSABLE EXPENSES

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

- a. Reproductions, printing, binding, collating, postage and shipping of reports, drawings, specifications and other project-related work directly and solely in support of the project.
- b. 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 Rider 107, Owner's current Travel Policy.
- c. 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.
- d. 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.
- e. Disbursements made by the Services Provider under approved subcontracts.

**8.02 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 8.

**8.03 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 9

## INVOICING

**9.01 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.

**9.02 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.

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

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

MD Anderson Cancer Center  
Accounts Payable – Box 199  
P. O. Box 301401  
Houston, TX 77230-1401  
The email address is: mdaccap@mdanderson.org

\* Note: See Rider 116 – Invoice Payment Requirements



**9.05 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.

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

**9.07 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.

**9.08 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 10 SERVICES PROVIDER'S ACCOUNTING RECORDS

**10.01** Services Provider shall maintain records of costs, expenses and billings pertaining to services performed under this Agreement in accordance with generally accepted accounting principles. Such records shall be available to the Owner or the Owner's authorized representative at mutually convenient times for a period of at least three (3) years after expiration or termination of this Agreement. Owner shall have the right to audit and to verify the details set forth in Services Provider's billings, certificates, and statements, either before or after payment. The terms of this paragraph shall survive any termination of the Agreement.

## ARTICLE 11 OWNERSHIP AND USE OF DOCUMENTS

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

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

## ARTICLE 12 TERMINATION OF AGREEMENT

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

12.02 **Termination for Convenience:** This agreement may be terminated for convenience by the Owner in whole or in part, upon at least thirty (30) days' written notice to the Services Provider.

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

## ARTICLE 13 DISPUTE RESOLUTION

13.01 **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 are governed by rules adopted by the Texas Attorney General at 1 Tex. Admin. Code, Chapter 68, as currently effective or subsequently amended.

**13.02 Owner's Representative:** The Owner designates Ben Melson, SrVP and CFO, as its representative in dispute resolution procedures.

## ARTICLE 14 INSURANCE

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

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

- (ii) Additional evidence, satisfactory to MD Anderson in its sole discretion, of the continued existence of all such insurance not less than thirty (30) days prior to the expiration of any such insurance. If, Contractor fails to pay any of the renewal premiums for the expiring policies, MD Anderson will have the right to make the payments and set-off the amount thereof against the next payment coming due to Contractor under this Agreement.
- C. Such insurance policies, with the exception of Workers' Compensation and Employer's Liability, will name and will reflect MD Anderson as an Additional Insured and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to MD Anderson, giving MD Anderson the right to pay the premium to maintain coverage. If MD Anderson exercises its right to pay the premium, Contractor will reimburse MD Anderson for the cost of the premium within ten (10) days after receipt of written request from MD Anderson.
- D. The insurance policies required in this Agreement will be kept in force for the periods specified below:
  - (i) Employer's Liability Insurance, Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance will be kept in force until receipt of final payment by Contractor; and
  - (ii) Workers' Compensation Insurance will be kept in force until the services have been fully performed and accepted by MD Anderson in writing

**14.02 Professional Liability Insurance:** The 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)**.

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

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

## ARTICLE 15 INDEMNITY

**15.01** 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 16 HISTORICALLY UNDERUTILIZED BUSINESSES

16.01 The Owner has adopted **Exhibit H**, Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. 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.

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 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 may designate a representative to act partially or wholly for Owner in connection with this Agreement. Services Provider shall coordinate its services solely through the designated representative.

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

**17.03 Confidentiality:** The Services Provider shall treat any Owner supplied information or information pertaining to Owner's business as confidential and shall not disclose any such information to others except as necessary for the performance of this Agreement or as authorized by the Owner in writing.

**17.04 Successors and Assigns.** The Owner and the Services Provider, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this Agreement. This Agreement is a personal service contract for the services of Services Provider, and Services Provider's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without written consent of Owner. The benefits and burdens of this Agreement are, however, assignable by Owner.

**17.05 Subcontracting:** The Services Provider agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, the Services Provider must identify the subcontractor(s) to Owner prior to any subcontractor beginning work. Submission and approval of a Historically Underutilized Businesses (HUB) Sub Contractor Plan is considered consent under this Article.

**17.06 Loss of Funding:** Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Services Provider and Owner may terminate this Agreement without further duty or obligation hereunder. Services Provider acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

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

**17.08 Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, the Services Provider certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**17.09 Franchise Tax Certification.** A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

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

**17.11 Taxes:** The University of Texas System is a tax exempt State of Texas Agency under Chapter 151, Texas Tax Code and an institution of higher education. Services Provider shall avail itself of all tax exemptions applicable to Services Provider's work or expenses.

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

**17.13 Captions:** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**17.14 Severability:** Should any provisions(s) of this Agreement be held invalid or unenforceable in any respect, that provision shall not affect any other provisions and this Agreement shall be construed as if the invalid or unenforceable provision(s) had not been included.

**17.15 Waivers:** No delay or omission by either party in exercising any right or power provided under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver of the right or power. A written waiver granted by either of the parties of any provision of this Agreement shall not be construed as a future waiver of that provision or a waiver of any other provision of the Agreement.

**17.16 Force Majeure:** No party shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform under this Agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, terrorist acts or any other circumstances of like character.

**17.17 Governing Law:** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Texas without regard for choice of law principles. All obligations of the parties created hereunder are enforceable in Travis 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 Financial Interest.** By signature hereon, Service Provider certifies that no member of the Board of Regents of The University of Texas System, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

## ARTICLE 18 NOTICES



18.1 All notices, consents, approvals, demands, requests or other binding communications under this Agreement shall be in writing. Written notice may delivered in person to the designated representative of the Services Provider or Owner; mailed by U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective three business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

18.2 The initially designated representatives of the parties for receipt of notices are as follows. Either party may change their designated representative for receipt of notices by written notice.

If to Owner:

Ben Melson  
SrVP and CFO  
Office of the SVP & CFO  
1515 Holcombe Blvd., Unit 1495  
Houston, TX 77030

With Copies to:

D. Samantha Harris, CCIM  
Executive Director, Facilities Finance  
Operations and Facilities Management  
6900 Fannin, Suite 11.1022  
Houston, Texas 77030

If to Services Provider:

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\*Remainder of Page Intentionally Blank\*

Changes in the terms and conditions under which the Contractor must perform the Work to be completed under this Agreement shall become effective only upon the execution of a written Amendment to this Agreement. Changes in the Work, the Contract Sum, or the Contract Time shall become effective upon the execution of a Change Order, signed by duly authorized representatives of the parties. Contractor shall be authorized to proceed with the change as of the Notice to Proceed date set forth in the Change Order. Subsequent to the issuance of a Change Order, MD Anderson will issue a revised Purchase Order to Contractor. Contractor must receive the revised Purchase Order prior to requesting compensation for Work to be completed under the Change Order in its Application for Payment. Only duly authorized representatives of MD Anderson's Supply Chain Management department are authorized to execute amendments to this Agreement and issue Purchase Orders to bind MD Anderson for any payment to be made to Contractor pursuant to the terms of this Agreement.

Having agreed to the foregoing terms, and with the intention of being bound, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

SEAL:

**[Contractor's Business Name]**

WITNESS:

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

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

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

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

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

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

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  
Title: Vice President for Operations and Facilities  
Management

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 - Sales Tax Exemption Form

**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 \_\_\_\_\_

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

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. 2.01 of Agreement)*

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

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

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

THIS AUTHORIZATION DEDUCTION (\$ \_\_\_\_\_)

*(Amount of this Work Order)*

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

cc:    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)

CPM 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

NAME OF AGREEMENT: \_\_\_\_\_ 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

1	Maximum Contract Sum: (as shown in Article 2 of Agreement)	\$	_____
2	Approved Additional Service Extras:	\$	_____
3	Approved Additional Service Deductions:	\$	_____
4	Current Maximum Contract Sum:	\$	_____0
	Identify the latest Authorized Work Order To Date		
	Prior to this Work Order: _____		
5	Total of All Work Orders Previously Authorized:	\$	_____
6	Less Previous Payments for All Work Orders:	\$	_____
7	Current Balance Available:	\$	_____0

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

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)

1	Work Order Payment Request	\$	<u>0</u>
2	Reimbursable Expenses	\$	<u>0</u>
3	Total Amount Earned This Application	\$	<u>0</u>

<input type="checkbox"/>	NO - HUB subcontracting participation is not part of this payment. COMPLETE ATTACHMENT I.
<input type="checkbox"/>	YES - HUB subcontracting participation is part of this payment. COMPLETE ATTACHMENT H.

\_\_\_\_\_

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

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

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

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

#### AUTHORIZATION

By: \_\_\_\_\_  
(/PM)

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

By: \_\_\_\_\_  
(Director)

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

**EXHIBIT E**

**SCOPE OF SERVICES**

## **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**

**RIDER 116, INVOICE PAYMENT REQUIREMENTS**

**EXHIBIT L**

**EXECUTION OF OFFER**

**EXHIBIT M**

**SALES TAX EXEMPTION FORM**