# PROFESSIONAL CONSULTING SERVICES AGREEMENT

This PROFESSIONAL CONSULTING SERVICES AGREEMENT (this “Agreement”) is entered into as of {ExecutionDate}, 20[\_\_] (the “Execution Date”), by and between [INSERT APPROPRIATE BIOMED REALTY ENTITY], a [Delaware] limited [partnership][OR][liability company] (“Owner”), and{ContractorName}, a {ContractorStateOfFormation} (“Consultant”).

# RECITALS

WHEREAS, Owner has selected Consultant to perform, either directly or pursuant to subcontracts (hereinafter defined), the services set forth in this Agreement (the “Services”) in connection with the property [referred to as [\_\_\_\_\_\_\_]] located at [STREET ADDRESS, {City}, {State}] (the “Property”); and

WHEREAS, Consultant is ready, willing and able to perform the Services.

**AGREEMENT**

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. **SCOPE OF SERVICES**
   1. Services. Consultant shall perform the services described in Exhibit A hereto, and shall furnish all services, labor and other components necessary to complete the Services in accordance with the terms of this Agreement (collectively, the “Services”). [In addition, the Services shall include any additional services to be performed by Consultant on a time and materials basis (“T&M Services”) upon written request by Owner (for which purpose an email from an authorized employee or agent of Owner shall be deemed sufficient)].
   2. Standard of Care. Consultant shall perform the Services with the degree of care and skill exercised by like professionals performing similar services on properties of a similar size and complexity and in the same geographic location as the Property.
   3. Permits and Compliance with Laws. Consultant shall perform the Services in strict compliance with (a) the ordinances; codes; rules; regulations; orders; permits; approvals; legislative and administrative actions of any governmental authority; final decrees, judgments or orders of any court; and requirements set forth in applicable engineering and construction codes and standards (collectively, “Applicable Laws”) in force in the locality in which the Services are performed and (b) Applicable Laws in force in the locality in which the Property is located.
2. **TIME**
   1. Commencement of Services/Term. Consultant shall (a) commence performance of the Services [on][OR][no later than] {CommencementDate}, 20[\_\_], and (b) [perform the Services through [\_\_\_\_\_\_\_], 20[\_\_]][OR][complete the Services no later than {ExpirationDate}, 20[\_\_]] (the “Expiration Date”). The “Term” of this Agreement shall be from the date set forth in (a) until the date set forth in (b).
   2. Completion of Services. Consultant shall issue an oral report to Owner (containing the items in Exhibit A attached hereto) within one (1) business day following any site visit to the Property by Consultant, and shall issue its draft written report to Owner (containing the items in Exhibit A attached hereto) within seven (7) days after such site visit. Owner shall have ten (10) days after receipt of the written report to deliver comments to Consultant. Consultant shall then have two (2) business days after receipt of such comments to revise the report and issue a final report as required by Exhibit A. This Agreement shall expire (except for those provisions that expressly survive the expiration or earlier termination thereof) on the earlier of (a) the Expiration Date and (b) the date on which Consultant satisfactorily completes the Services in accordance with this Agreement; provided that Owner may unilaterally extend the term of this Agreement in the event that the Services are not complete as of the Expiration Date.
   3. Time of the Essence. Time is of the essence with respect to the performance of every provision of this Agreement.
3. **COMPENSATION AND PAYMENTS**
   1. Contract Amount. Subject to additions or deductions as hereinbefore or hereinafter provided, Owner shall pay Consultant[ an amount not to exceed (“NTE”)] [SPELL OUT DOLLARS] Dollars (${ContractAmount}) (the “Contract Amount”) as full and complete compensation for the performance of the Services[, pursuant to the following breakdown:][OR][.]

[DESCRIBE SERVICES]: $[\_\_\_\_\_\_\_][NOTE: BREAK DOWN (IF REQUIRED)]

* + 1. [In addition, Owner shall compensate Consultant (as a part of the Contract Amount) in accordance with the pricing schedule set forth as part of Exhibit A hereto and incorporated herein, in an amount not to exceed [the lesser of either ][\_\_\_\_\_\_\_] Dollars (${MonthlyCompensation}) per month or [\_\_\_\_\_\_\_] Dollars (${YearlyCompensation}) per year, [NOTE: FOR EMERGENCY SERVICES: [and for Emergency Services, an amount not to exceed [\_\_\_\_\_\_\_] Dollars (${EmergencyCompensation}) (provided that such limit for Emergency Services shall be an aggregate limit for Emergency Services provided by Consultant at any property owned by Owner or any of Owner’s affiliates (who shall be third party beneficiaries of this Section), not an individual limit for the property owned by Owner)], which limits shall not be increased except by an agreement in writing signed by Owner and Consultant, for T&M Services performed in accordance with the terms of this Agreement.]
    2. In addition to compensation payable to Consultant pursuant to the remainder of this Section 3.1, Owner shall reimburse Consultant at cost for actual and reasonable expenditures made by Consultant that are necessary for performance of the Services (the “Reimbursable Expenses”), provided that such expenditures shall not exceed [\_\_\_\_\_\_\_] Dollars (${ReimbursableExpenses}).
  1. [Applications for Payment. [NOTE: SPECIFIC LIEN WAIVER SUBSECTIONS SHOULD ONLY BE INCLUDED IF THE SERVICES ARE OF A TYPE FOR WHICH CONSULTANT HAS A RIGHT TO LIEN THE PROPERTY IN THE STATE. IF NOT, STATE “[INTENTIONALLY OMITTED]” IN PLACE OF THE LIEN WAIVER LANGUAGE.][CALIFORNIA: [Consultant shall deliver to Owner a written invoice (the “Application for Payment”) on or before the fifth (5th) day of each month during the Term describing in reasonable detail all Services performed by Consultant during the previous month. Provided the Application for Payment is timely delivered to Owner, Owner shall make payment to Consultant not later than the final day of the month. With each Application for Payment Consultant shall submit (a) such evidence as may be customary, and such evidence as may be reasonably required by Owner, to demonstrate costs incurred or estimated to be incurred on account of the Services and the Contract Amount during such month and the percentage of completion of each category of Services reasonably estimated to the end of the month of the submission of such Application for Payment, (b) certification by Consultant that the Services for which payment is being sought has been completed in accordance with this Agreement and all applicable permits, (c) [a conditional waiver and release of lien upon progress or final payment (as applicable) from Consultant and each subcontractor complying with the requirements of California Civil Code Section 8132 or 8136 (as applicable) or any successor statute and in the applicable form attached as Exhibit C hereto with respect to the Services to which the Application for Payment applies][OR][Intentionally omitted], (d) [an unconditional waiver and release of lien upon progress payment from Consultant and each subcontractor complying with the requirements of California Civil Code Section 8134 or any successor statute and in the applicable form attached as Exhibit C hereto with respect to all Services previously paid through the date of the immediately preceding Application for Payment][OR][Intentionally omitted], (e) a detailed written description and copies of all change orders and other modifications to the Services or this Agreement issued through the date of the Application for Payment and (f) such other information or documentation as may be reasonably requested by Owner or Owner’s lenders.[ Within ten (10) days after Consultant’s receipt of the final payment under this Agreement, Consultant shall deliver to Owner an unconditional waiver and release of lien upon payment from Consultant and each subcontractor complying with the requirements of California Civil Code Section 8138 and in the applicable form attached as Exhibit C hereto with respect to all Services.]]][COLORADO & ILLINOIS: [ Consultant shall deliver to Owner a written invoice (the “Application for Payment”) on or before the fifth (5th) day of each month during the Term describing in reasonable detail all Services performed by Consultant during the previous month. Provided the Application for Payment is timely delivered to Owner, Owner shall make payment to Consultant not later than the final day of the month. With each Application for Payment Consultant shall submit (a) such evidence as may be customary, and such evidence as may be reasonably required by Owner, to demonstrate costs incurred or estimated to be incurred on account of the Services and the Contract Amount during such month and the percentage of completion of each category of Services reasonably estimated to the end of the month of the submission of such Application for Payment, (b) certification by Consultant that the Services for which payment is being sought has been completed in accordance with this Agreement and all applicable permits, (c) [a conditional waiver and release of lien upon progress payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to the Services to which the Application for Payment applies][OR][Intentionally omitted], (d) [an unconditional waiver and release of lien upon payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to all Services previously paid through the date of the immediately preceding Application for Payment][OR][Intentionally omitted], (e) a detailed written description and copies of all change orders and other modifications to the Services or this Agreement issued through the date of the Application for Payment and (f) such other information or documentation as may be reasonably requested by Owner or Owner’s lenders.[ Within ten (10) days after Consultant’s receipt of the final payment under this Agreement, Consultant shall deliver to Owner an unconditional waiver and release of lien upon payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to all Services.]][NOTE: FOR ILLINOIS ONLY: [ All lien waivers provided to Owner under this Agreement shall be notarized by the appropriate party.]]][DELAWARE, NEW JERSEY, NEW YORK & PENNSYLVANIA: [ Consultant shall deliver to Owner a written invoice (the “Application for Payment”) on or before the fifth (5th) day of each month during the Term describing in reasonable detail all Services performed by Consultant during the previous month. Provided the Application for Payment is timely delivered to Owner, Owner shall make payment to Consultant not later than the final day of the month. With each Application for Payment Consultant shall submit (a) such evidence as may be customary, and such evidence as may be reasonably required by Owner, to demonstrate costs incurred or estimated to be incurred on account of the Services and the Contract Amount during such month and the percentage of completion of each category of Services reasonably estimated to the end of the month of the submission of such Application for Payment, (b) certification by Consultant that the Services for which payment is being sought has been completed in accordance with this Agreement and all applicable permits, (c) [an unconditional waiver and release of lien upon payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to all Services previously paid through the date of the immediately preceding Application for Payment][OR][Intentionally omitted], (d) [a detailed written description and copies of all change orders and other modifications to the Services or this Agreement issued through the date of the Application for Payment][OR][Intentionally omitted] and (e) such other information or documentation as may be reasonably requested by Owner or Owner’s lenders.[ Within ten (10) days after Consultant’s receipt of the final payment under this Agreement, Consultant shall deliver to Owner an unconditional waiver and release of lien upon payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to all Services.]]][FLORIDA, MISSOURI, NORTH CAROLINA, VIRGINIA & WASHINGTON: [ Consultant shall deliver to Owner a written invoice (the “Application for Payment”) on or before the fifth (5th) day of each month during the Term describing in reasonable detail all Services performed by Consultant during the previous month. Provided the Application for Payment is timely delivered to Owner, Owner shall make payment to Consultant not later than the final day of the month. With each Application for Payment Consultant shall submit (a) such evidence as may be customary, and such evidence as may be reasonably required by Owner, to demonstrate costs incurred or estimated to be incurred on account of the Services and the Contract Amount during such month and the percentage of completion of each category of Services reasonably estimated to the end of the month of the submission of such Application for Payment, (b) certification by Consultant that the Services for which payment is being sought has been completed in accordance with this Agreement and all applicable permits, (c) [a conditional waiver and release of lien upon progress or final payment (as applicable) from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to the Services to which the Application for Payment applies][OR][Intentionally omitted], (d) [an unconditional waiver and release of lien upon payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to all Services previously paid through the date of the immediately preceding Application for Payment][OR][Intentionally omitted], (e) a detailed written description and copies of all change orders and other modifications to the Services or this Agreement issued through the date of the Application for Payment and (f) such other information or documentation as may be reasonably requested by Owner or Owner’s lenders. [Within ten (10) days after Consultant’s receipt of the final payment under this Agreement, Consultant shall deliver to Owner an unconditional waiver and release of lien upon payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to all Services.]]][MASSACHUSETTS: [ Consultant shall deliver to Owner a written invoice (the “Application for Payment”) on or before the fifth (5th) day of each month during the Term describing in reasonable detail all Services performed by Consultant during the previous month. Provided the Application for Payment is timely delivered to Owner, Owner shall make payment to Consultant not later than the final day of the month. With each Application for Payment Consultant shall submit (a) such evidence as may be customary, and such evidence as may be reasonably required by Owner, to demonstrate costs incurred or estimated to be incurred on account of the Services and the Contract Amount during such month and the percentage of completion of each category of Services reasonably estimated to the end of the month of the submission of such Application for Payment, (b) certification by Consultant that the Services for which payment is being sought has been completed in accordance with this Agreement and all applicable permits, (c) [a conditional waiver and release of lien upon progress payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to the Services to which the Application for Payment applies][OR][Intentionally omitted], (d) a detailed written description and copies of all change orders and other modifications to the Services or this Agreement issued through the date of the Application for Payment and (e) such other information or documentation as may be reasonably requested by Owner or Owner’s lenders.[ Within ten (10) days after Consultant’s receipt of the final payment under this Agreement, Consultant shall deliver to Owner an unconditional waiver and release of lien upon payment from Consultant and each subcontractor complying with the requirements of applicable laws and in the applicable form attached as Exhibit C hereto with respect to all Services.]]]
  2. Payment.
     1. By the final day of each month[, subject to satisfactory receipt of the documentation set forth in Section 3.2], Owner shall pay to Consultant an amount equal to the value, based on the Contract Amount, of all Services performed pursuant to this Agreement during the preceding calendar month as reasonably determined by Owner[ and supported by the documentation provided pursuant to Section 3.2]. Notwithstanding the foregoing, if a dispute exists between Owner and Consultant regarding any progress payment, Owner may withhold from the payment an amount not exceeding one hundred fifty percent (150%) of the disputed amount.
     2. Within ten (10) days after receipt of written notice by Owner from Consultant that any Services in dispute have been completed in accordance with the terms of this Agreement, Owner must advise Consultant of the acceptance or rejection of the disputed Services. Within ten (10) days after acceptance of the disputed Services, Owner must release the retained portion of the Contract Amount that is no longer under dispute.
     3. Consultant shall, within five (5) business days after notification thereof (by Owner or otherwise), pay off or bond over any liens or claims made by any subcontractor against the Property or Owner’s property or any portion of either.
  3. Payment Terms. Owner and Consultant agree that the Contract Amount represents full payment in respect of the performance of all of Consultant’s obligations under this Agreement. This amount includes the cost of all labor, personnel, taxes, insurance, fees, systems, equipment, materials, Consultant’s general conditions and Consultant’s fee, profit and overhead.
  4. Payment Not Acceptance. No payment under this Agreement shall be evidence of performance of this Agreement by Consultant, either wholly or in part, and no payment or delivery of payment by Owner shall be construed to be an acceptance of defective or improper work, materials or services, or an affirmation of any invoice against which such payment is made.

1. **INSURANCE**
   1. Insurance Required of Consultant. Consultant shall provide the insurance required of it by the provisions of Exhibit B hereto. Consultant must disclose any self-insurance, including self-insurance retentions, to Owner in writing in advance, which shall be subject to Owner’s prior written approval in its sole discretion. If Consultant self-insures with Owner’s prior written approval, Consultant is itself acting as though it were providing the insurance required under the provisions of this Agreement, and Consultant shall pay those amounts due in lieu of insurance proceeds that would have been covered and payable if the insurance policies had been carried for such self-insured coverages, which amounts shall be treated as insurance proceeds for all purposes under this Agreement.
   2. Insurance Required of Owner. Owner shall provide the insurance required of it by the provisions of Exhibit B hereto. Any coverage maintained by Consultant shall be primary and any insurance carried by Owner shall be secondary and non-contributory to that carried by Consultant.
2. **INDEMNIFICATION**
   1. Professional Services Indemnity. Consultant shall, to the fullest extent permitted by Applicable Laws, indemnify, save, [defend (at Owner’s option and with counsel reasonably acceptable to Owner)][OR][pay the defense costs of] and hold harmless Owner from and against any and all demands, claims, liabilities, losses, costs, actions, causes of action, damages, suits or judgments, and all reasonable expenses (including reasonable attorneys’ fees, consultants’ fees and costs, charges and disbursements, regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed) incurred in investigation or resisting the same (collectively, “Claims”) to the extent arising from Consultants’ negligent acts, error or omissions with respect to Consultant’s professional services. Consultant is not obligated to indemnify Owner in any manner whatsoever for Owner’s negligence, whether active, passive or otherwise. Consultant shall defend itself from any actual or alleged Claims arising from the Services.
   2. General Indemnity for Other than Professional Services. Consultant shall, to the fullest extent permitted by Applicable Laws, indemnify, save, [defend (at Owner’s option and with counsel reasonably acceptable to Owner)][OR][pay the defense costs of] and hold harmless Owner and financing entities for the Property (“Financing Entities”), and each of their respective partners, officers, directors, shareholders, employees, agents, representatives, consultants, attorneys, parents, subsidiaries, affiliates, heirs, beneficiaries, successors and assigns, and any other person or entity designated by Owner (collectively, the “Indemnitees” and, separately, each an “Indemnitee”) for, from and against any and all Claims of any kind or nature arising from (a) the acts, errors or omissions or willful misconduct of Consultant or (b) breach or default by Consultant in the performance of any of its obligations hereunder, except to the extent directly arising from Owner’s negligence or willful misconduct. Consultant’s obligations under this Section shall not be affected, reduced or limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant under workers’ compensation acts, disability benefit acts, employee benefit acts or similar legislation. Consultant’s obligations under this Section shall survive the expiration or earlier termination of this Agreement.
   3. No Limit. In claims against any Person or entity indemnified under this Article 5 by an employee of Consultant, or anyone directly or indirectly employed by Consultant, or anyone for whose acts Consultant may be liable, the indemnification obligation under Section 5.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or a subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.
3. **COVENANTS/REPRESENTATIONS/WARRANTIES**
   1. Consultant Covenants, Representations and Warranties. Consultant represents, warrants and agrees as follows:
      1. Organization, Standing and Qualification. Consultant is duly organized, validly existing and in good standing under the laws of the [Commonwealth][OR][State] of Delaware and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of the state in which the Property is located (the “State”) and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would adversely affect its ability to perform its obligations hereunder.
      2. Enforceable Contract. This Agreement has been duly authorized, executed and delivered by Consultant and constitutes the legal, valid and binding obligation of Consultant, enforceable in accordance with its terms.
      3. No Conflict. The execution, delivery, and performance by Consultant of this Agreement will not violate or conflict with (a) Applicable Laws, (b) any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected or (c) its organizational documents.
      4. No Government Approvals. No authorization, approval, exemption or consent by any governmental authority is required in connection with the authorization, execution, delivery or performance of this Agreement by Consultant.
      5. No Suits, Proceedings. There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Consultant’s knowledge, threatened against it at law or in equity before any court or before any other governmental authority that individually or in the aggregate could materially and adversely affect the business, properties or assets or the condition, financial or otherwise, of Consultant, or in any way impair its ability to perform its obligations under this Agreement.
      6. Financial Condition. Consultant is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.
      7. Equipment. Consultant is able to furnish the equipment required to complete the Services and perform its obligations hereunder and has sufficient experience and competence to do so.
      8. Experience. Consultant is a sophisticated consultant that possesses a high level of experience and expertise in the performing Services similar to the Services for properties of the size, complexity and nature as the Property, and shall perform the Services with the care, skill and diligence of such a consultant.
      9. Hazardous Materials. To the extent Consultant encounters hazardous materials at the Property, Consultant shall notify Owner in writing and cease performing Services in the affected area until Owner notifies Consultant to proceed with the Services in such area.
   2. Owner Covenants, Representations and Warranties. Owner represents, warrants and agrees as follows:
      1. Formation, Standing and Qualification. Owner is a limited [liability company][OR][partnership] duly formed, validly existing and in good standing under the laws of the State of Delaware and has full power to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified and in good standing under the laws of the State and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would adversely affect its ability to perform its obligations hereunder.
      2. Enforceable Contract. This Agreement has been duly authorized, executed and delivered by Owner and constitutes the legal, valid and binding obligation of Owner, enforceable in accordance with its terms.
      3. No Conflict. The execution, delivery and performance by Owner of this Agreement will not violate or conflict with (a) Applicable Laws, (b) any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected or (c) its organizational documents.
      4. No Government Approvals. No authorization, approval, exemption or consent by any governmental authority is required in connection with the authorization, execution, delivery or performance of this Agreement by Owner.
      5. No Suits, Proceedings. There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Owner’s knowledge, threatened against it at law or in equity before any court or before any other governmental authority that individually or in the aggregate could materially and adversely affect the business, properties or assets or the condition, financial or otherwise, of Owner or in any way impair its ability to perform its obligations under this Agreement.
      6. Financial Condition. Owner is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.
4. **DEFAULTS AND REMEDIES**
   1. Defaults. The occurrence of any one or more of the following events shall constitute a “Default” hereunder by Consultant:
      1. Performance. The failure by Consultant to observe or perform any obligation or covenant contained herein to be performed by Consultant, where such failure shall continue for a period of five (5) days after written notice thereof from Owner to Consultant;
      2. Assignment for Creditors. Consultant makes an assignment for the benefit of creditors;
      3. Receivership. A receiver, trustee or custodian is appointed to or does take title, possession or control of all or substantially all of Consultant’s assets;
      4. Voluntary Bankruptcy. Consultant files a voluntary petition under the United States Bankruptcy Code or any successor statute (as the same may be amended from time to time, the “Bankruptcy Code”) or an order for relief is entered against Consultant pursuant to a voluntary or involuntary proceeding commenced under any chapter of the Bankruptcy Code;
      5. Involuntary Bankruptcy. Any involuntary petition if filed against Consultant under any chapter of the Bankruptcy Code and is not dismissed within one hundred twenty (120) days; or
      6. Attachment. Consultant’s interest in this Agreement is attached, executed upon or otherwise judicially seized and such action is not released within one hundred twenty (120) days of the action.
   2. Default Notices. Notices given under Section 7.1 shall specify the alleged default and shall demand that Consultant perform the provisions of this Agreement. No such notice shall be deemed a termination of this Agreement unless Owner elects otherwise in such notice.
   3. Owner’s Remedies. In the event of a Default by Consultant, Owner shall be entitled to:
      1. Damages. Recover from Consultant all damages incurred by Owner by reason of Consultant’s Default, including:
         1. Any amount necessary to compensate Owner for all the detriment arising from Consultant’s failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result therefrom, including the cost of completing the Services or having a third party complete the Services; plus
         2. At Owner’s election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Laws.
      2. Termination. Notwithstanding anything herein to the contrary, in the event of a Default by Consultant, Owner may elect at any time to terminate this Agreement pursuant to Article 8 (except for those provisions that expressly survive the expiration or earlier termination thereof) and to recover damages to which Owner is entitled. If Owner does not elect to terminate this Agreement as provided in this Section 7.3(b) or Article 8, then Owner may, at any time thereafter, elect to terminate this Agreement (except for those provisions that expressly survive the expiration or earlier termination thereof) and to recover damages to which Owner is entitled.
   4. Non-Exclusivity. All of Owner’s rights, options and remedies hereunder shall be construed and held to be nonexclusive and cumulative. Owner shall have the right to pursue any one or all of such remedies, or any other remedy or relief that may be provided by Applicable Laws, whether or not stated in this Agreement.
   5. No Release. Owner’s termination of this Agreement shall not relieve Consultant of any liability to Owner that has previously accrued or that shall arise based upon events that occurred prior to the later to occur of the date of termination of this Agreement.
5. **TERMINATION.** In addition to its rights pursuant to Section 7.3(b), Owner may terminate this Agreement (except for those provisions that expressly survive the expiration or earlier termination thereof) at any time with or without cause. If Owner terminates this Agreement pursuant to this Article, Consultant shall be compensated for Services performed pursuant to Article 1 prior to receipt of the notice of termination; provided, however, that the compensation for such Services shall not exceed the compensation set forth in Article 3 and shall not include any compensation for profits or costs for unperformed Services.
6. **MISCELLANEOUS PROVISIONS**
   1. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State, without regard to conflicts of law principles.
   2. Successors & Assigns. Each of the covenants, conditions and agreements contained in this Agreement shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators and permitted successors and assigns. Nothing in this section shall in any way alter the provisions of this Agreement restricting assignment.
   3. Assignment.
      1. By Owner. Owner shall not assign this Agreement without the prior written consent of Consultant, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Consultant’s consent shall not be required for any assignment (a) to any entity that directly or indirectly controls, is controlled by or is under common control with Owner or that acquires all or substantially all of the assets or direct or indirect ownership interests of Owner or Owner’s affiliates, or (b) in connection with any merger, consolidation or reorganization of Owner or Owner’s affiliates.
      2. By Consultant. Consultant shall not, voluntarily or by operation of law, directly or indirectly (whether by merger or otherwise), assign, pledge, hypothecate, or otherwise transfer this Agreement or any of Consultant’s rights, interests or obligations under this Agreement, in whole or in part, without the prior written consent of Owner in its sole and absolute discretion, and any such purported assignment, pledge, hypothecation, or transfer without the prior written consent of Owner shall be null and void. Any purported assignment by Consultant in contravention of this Section 9.3 shall constitute a default under this Agreement, without the requirement of notice or an opportunity to cure. Upon any assignment of this Agreement, and notwithstanding such assignor’s assignment of all of its rights and interest in this Agreement (including under the indemnification provisions) to its assignee, the assignor shall continue to be indemnified by Consultant and Owner and shall thereafter be deemed a third party beneficiary of the indemnification provisions of this Agreement.
   4. Attorneys’ Fees. If either party commences a demand, claim, action, cause of action or suit against the other party arising out of or in connection with this Agreement, then the substantially prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including reasonable attorneys’ fees and expenses, incurred by the substantially prevailing party in such action or proceeding and in any appeal in connection therewith (regardless of whether the applicable demand, claim, action, cause of action or suit is voluntarily withdrawn or dismissed).
   5. Notice. Except as otherwise stated in this Agreement, any notice, consent, demand, invoice, statement or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by (a) personal delivery, (b) overnight delivery with a reputable international overnight delivery service, such as FedEx, or (c) facsimile or email transmission, so long as such transmission is followed within one (1) business day by delivery utilizing one of the methods described in (a) or (b). Any such notice, consent, demand, invoice, statement or other communication shall be deemed delivered (x) upon receipt, if given in accordance with subsection (a); (y) one business (1) day after deposit with a reputable international overnight delivery service, if given if given in accordance with subsection (b); or (z) upon transmission, if given in accordance with subsection (c). Any notice, consent, demand, invoice, statement or other communication required or permitted to be given under this Agreement shall be addressed to the parties at the following addresses:

If to Owner: [\_\_\_\_\_\_\_]

4570 Executive Drive, Suite 400

San Diego, California 92121

Attn: Legal Department

Email: [legalreview@biomedrealty.com](mailto:legalreview@biomedrealty.com)

If to Consultant: {ContractorName}

{ContractorStreetAddress}

{City}, {State} {ZipCode}

{ContractorAttn}

* 1. No Waiver; Cumulative Remedies. No waiver of any term, covenant or condition of this Agreement shall be binding unless executed in writing by the party entitled to the benefit of such term, covenant or condition. The waiver of any breach or default of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any preceding or subsequent breach or default of such term, covenant or condition or any other term, covenant or condition of this Agreement. Except as expressly provided in this Agreement, the rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers and privileges under this Agreement or available at law, in equity or otherwise. No failure to exercise or delay in exercising any right, remedy, power or privilege shall operate as a waiver thereof, and no single or partial exercise of any right, remedy, power or privilege shall preclude the exercise of any other right, remedy, power or privilege.
  2. Waiver of Jury Trial. To the extent permitted by applicable laws, the parties waive trial by jury in any action, proceeding or counterclaim brought by the other party hereto related to matters arising out of or in any way connected with this Agreement or any claim of injury or damage related to this Agreement.
  3. [NOTE: USE IF CONSULTANT WILL BE ON-SITE IN ANY CAPACITY] [COVID-19. Consultant acknowledges and agrees that COVID-19 may be present in or around the Property and individuals working at or near the Property.  Consultant, on behalf of itself, its affiliates and its subcontractors, and their respective parents, shareholders, partners, directors, officers, employees, material suppliers and other vendors, and each of their respective successors and assigns (collectively with Consultant, the “Consultant Parties”) hereby waives any recourse against, releases Owner and all other Indemnitees from, and expressly assumes the risk of any and all injury, sickness, loss or damage, including death, arising from the presence of COVID-19 in or around the Property or individuals working at or near the Property.  Consultant shall indemnify, reimburse, save, defend (at Owner’s option and with counsel reasonably acceptable to Owner) and hold harmless the Indemnitees for, from and against any and all Claims of any kind or nature arising from Consultant Parties’ contact with COVID-19 at or near the Property or in relation to the Services.  The foregoing obligations of Consultant are in addition to Consultant’s obligations under Article 5.  In addition, Consultant shall (and ensure that all Consultant Parties) adhere to any federal, state and local requirements and recommendations (including from the Centers for Disease Control and Prevention) related to COVID-19.]
  4. Confidentiality. Consultant shall receive and hold in confidence:
     1. Owner’s Information. All information and data, of whatever nature, relating to Owner (including Owner’s operations, policies, procedures, techniques, accounts, financial information, budgets, personnel, customers, know-how, inventions, prototypes, materials, processes, process equipment, methodologies, tests and other procedures, designs, specifications, product information and information relating to the development, manufacturing or testing of equipment, products or systems) or used by Owner in carrying on its business, in any case that are disclosed by Owner orally, in writing, by drawings or otherwise visually, or by testing, inspection or otherwise;
     2. Third Party Information. All information and data obtained by Consultant or its officers, employees or agents that is proprietary to a third party and that Owner is obligated to treat as confidential or that is disclosed by Owner in connection with the performance by Consultant of Consultant’s obligations or Services pursuant to this Agreement; and
     3. This Agreement. The terms and provisions of this Agreement, including any amendments, change orders, supplements or modifications hereto.

Without limiting the generality of the foregoing, Consultant and its employees, agents and representatives shall not make any press release, public announcement or public disclosure regarding the Services, the Property or Owner without Owner’s prior written consent in its sole discretion.

* 1. Relationship of Parties. The parties to this Agreement are independent contractors and are not, by virtue of this Agreement or otherwise, in any employer-employee, principal-agent, joint venture or partnership relationship with each other. Neither party is authorized to act on the other party’s behalf or bind the other party.
  2. Amendment. No provision of this Agreement may be modified, amended or supplemented except by an agreement in writing signed by Owner and Consultant.
  3. Construction. Where applicable in this Agreement, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The words “include,” “includes,” “included” and “including” mean “‘include,’ etc., without limitation.” The word “shall” is mandatory and the word “may” is permissive. The section headings of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. Owner and Consultant have each participated in the drafting and negotiation of this Agreement, and the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly for or against either Owner or Consultant.
  4. Severability. Any provision of this Agreement that shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all other provisions of this Agreement shall remain in full force and effect and shall be interpreted as if the invalid, void or illegal provision did not exist.
  5. Integration. The terms of this Agreement are intended by the parties as a final, complete and exclusive expression of their agreement with respect to the terms that are included in this Agreement, and may not be contradicted or supplemented by evidence of any other prior or contemporaneous agreement.
  6. Independent Obligations. Notwithstanding anything to the contrary contained in this Agreement, Consultant’s obligations under this Agreement are independent and shall not be conditioned upon performance by Owner.
  7. Reasonable Consent. Whenever consent or approval of either party is required pursuant to this Agreement, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth to the contrary in this Agreement
  8. Authority. Consultant guarantees, warrants and represents that the individual or individuals signing this Agreement have the power, authority and legal capacity to sign this Agreement on behalf of and to bind all entities, corporations, partnerships, limited liability companies, joint ventures or other organizations and entities on whose behalf such individual or individuals have signed.
  9. Counterparts. This Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document.
  10. Signatures. A facsimile, electronic or portable document format (PDF) signature on this Agreement shall be equivalent to, and have the same force and effect as, an original signature.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution Date.

OWNER:

[\_\_\_\_\_\_\_],

a [\_\_\_\_\_\_\_]

By:

Name:

Title:

CONSULTANT:

{ContractorName},

a {ContractorStateOfFormation}

By:

Name:

Title:

**EXHIBIT A**

**SERVICES**

**EXHIBIT B**

**INSURANCE**

Owner-Provided Insurance Coverage:

None.

Consultant-Provided Insurance Coverage:

Consultant, as part of the Agreement with respect to the Property, shall provide and maintain during the term of this Agreement and any additional periods as noted below, the following minimum insurance with insurers financially acceptable and lawfully authorized to do business in the applicable jurisdiction. With the exception of Professional Liability, Workers’ Compensation and Employer’s Liability the following entities shall be included as additional insureds as respects liability arising from the Services:

1. Owner: [\_\_\_\_\_\_\_]
2. Owner’s Other Additional Insureds: [BioMed Realty, L.P.][AND][NOTE: FOR EMERYVILLE, GROVE OR WATERIDGE POINTE: [BioMed Realty II LP]]

and each of their respective lenders, affiliates, subsidiaries, directors, officers, representatives and employees.

Commercial General Liability:

Commercial General Liability Insurance on a broad-based occurrence coverage form with minimum limits of $1,000,000 per occurrence for bodily injury and property damage and $2,000,000 general aggregate. Coverage must also include a minimum $2,000,000 products/completed operations aggregate. In addition, Consultant must include coverage for personal injury and contractual liability.

Commercial Automobile Liability:

Commercial Automobile Liability insurance covering liability arising from the use or operation of any auto on behalf of Consultant or invited by Consultant (including those owned, hired, rented, leased, borrowed, scheduled or non-owned). Coverage shall be on a broad-based occurrence form in an amount not less than $2,000,000 combined single limit per accident for bodily injury and property damage. Such coverage shall apply to all vehicles and persons whether accessing the property with active or passive consent.

Professional Liability (Errors and Omissions):

Minimum limit of $2,000,000 per claim and in the aggregate covering wrongful acts by or on behalf of the Consultant. All of Consultant’s subconsultants of any tier shall be required to maintain in full force and effect limits of professional liability insurance equal of those of Consultant. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this Agreement and coverage is continuously maintained during all periods Consultant performs Services for Owner plus an additional period of three (3) years after termination of this Agreement or the last date Services are performed, whichever is later.

[NOTE: ONLY INCLUDE POLLUTION LIABILITY FOR INDUSTRIAL HYGIENE SERVICES

Pollution Liability:

If Consultant’s Services include handling, remediation, treatment, storage or disposal of waste or hazardous materials on or about the project site as determined by Owner, Consultant shall maintain a minimum limit of $2,000,000 per incident with a $2,000,000 policy aggregate. Such coverage shall include defense costs applicable to claims for bodily injury, property damage or clean-up costs. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this Agreement and coverage is continuously maintained during all periods Consultant performs Services for Owner plus an additional period of three (3) years after termination of this Agreement or the last date Services are performed, whichever is later.]

Excess Liability:

Umbrella/Excess Liability insurance in the amount of $1,000,000 per occurrence and general aggregate. This policy should provide excess coverage above all Consultant required policies noted in this Exhibit B with the exception of Professional Liability and Pollution Liability (if required). Coverage shall be at least as broad as the underlying coverages.

Workers’ Compensation and Employer’s Liability Insurance:

Workers’ Compensation in compliance with all statutory laws of the State or as may be available on a voluntary basis. Employer’s Liability must be at least in the amount of $1,000,000 for bodily injury by accident for each employee, $1,000,000 for bodily injury by disease for each employee, and $1,000,000 bodily injury by disease for policy limit. To the extent permitted by applicable laws, Consultant’s and any subcontractors’ Workers’ Compensation / Employer’s Liability policies shall be endorsed to waive subrogation against Owner, the other additional insureds and their respective consultants and agents.

Additional Requirements:

All insurance carriers shall at all times maintain a current minimum policy holder rating of “A-” and a financial category rating of class VII by the A.M. Best Company.

Consultant shall deliver to Owner certificates of insurance necessary to evidence the coverages required herein. To the extent permitted by applicable law, Consultant and its insurers agree to waive all rights against the Owner as respects any loss, damage, claims, suits or demands howsoever caused, that are covered, or should have been covered, by valid and collectible insurance, including any deductibles or self-insurance maintained thereunder. If necessary, Consultant shall endorse the required insurance policies to permit waivers of subrogation in favor of Owner as required hereunder. With respect to workers’ compensation only, Consultant agrees to hold harmless and indemnify Owner for any loss or expense incurred as a result of Consultant’s failure to obtain such waivers of subrogation from Consultant’s insurers.

All insurance coverages applicable to the Property shall remain in full force and effect to the conclusion of the Services and in accordance with any stipulated completed operations period. Such policies shall require the insurance carrier to give Owner at least twenty (20) days’ prior written notice before any cancellation, non-renewal, modification or reduction of insurance becomes effective (except in the event of non-payment of premium, in which case ten (10) days prior written notice shall be given). Should carrier be unwilling or unable to provide such notice, Consultant shall provide notice to Owner in accordance with this section.

It is expressly agreed and understood that the insurance policies and limits required hereunder shall not limit the liability of Consultant under this Agreement, and that Owner makes no representation that these types or amounts of insurance are sufficient or adequate to protect Consultant’s interests or liabilities, but are merely minimums. Any coverage maintained by Consultant shall be primary and any insurance carried by Owner shall be secondary and non-contributory to that carried by Consultant.

**[EXHIBIT C**

**FORMS OF LIEN WAIVERS**

[See attached]]