

FORM OF AGREEMENT 1-CM-A

THE PENNSYLVANIA STATE UNIVERSITY
OWNER AND CONSTRUCTION MANAGER
AGENCY AGREEMENT

THIS AGREEMENT made this _____ day of _____

in the year Two Thousand _____ by and between

hereinafter called the 'Construction Manager' (CM) and THE PENNSYLVANIA STATE UNIVERSITY, a state-related institution and instrumentality of the Commonwealth of Pennsylvania subject to the Pennsylvania nonprofit corporation laws, hereinafter called the 'Owner' for the following project:

In consideration of the promises set forth herein, and with intent to be legally bound, the parties agree as follows:

ARTICLE 1: THE DOCUMENTS FORMING THE AGREEMENT

The Documents forming the subject of this Agreement are listed in the following documents (Note: All Exhibits are attached and are incorporated hereto):

1. Exhibit A:
2. Exhibit B:
3. Exhibit C:
4. Exhibit D:
5. Exhibit E:

ARTICLE 2: THE PROFESSIONAL

References to the Professional in any of the Contract Documents shall refer to the Professional retained by the Owner whose name appears hereafter:

The Professional shall either be a person or firm lawfully licensed to practice architecture or engineering or the appropriate office of the Owner as noted.

ARTICLE 3: THE CONSTRUCTION TEAM AND GENERAL OBLIGATIONS OF CONSTRUCTION MANAGER

3.1 THE PROJECT TEAM

The Construction Manager, the Owner and the Professional, hereinafter called the Project Team, shall work as a team from the Notice to Proceed for this Agreement through completion of the Work. The Construction Manager shall provide leadership to the Project Team on all matters relating to preconstruction, procurement, construction, and project close-out.

3.2 GENERAL OBLIGATIONS OF CONSTRUCTION MANAGER

The Construction Manager agrees to provide leadership to the Project Team and to furnish all labor, material, tools, machinery, equipment, facilities and supplies to do all things necessary for the completion of Construction Management Services.

The Construction Manager's services consist of those services performed by the Construction Manager, Construction Manager's employees, and Construction Manager's consultants.

The Construction Manager's services shall be expeditiously performed as mutually agreed to between the Construction Manager and the Owner, consistent with appropriate skill, care, and the orderly progress of the work.

By executing this Agreement, the Construction Manager represents to the Owner that the Construction Manager is professionally qualified to act as the Construction Manager for the Project and is licensed to practice by all public entities having jurisdiction over the Construction Manager and the Project. The Construction Manager further represents to the Owner that the Construction Manager will maintain all necessary licenses, permits, or other authorizations necessary to act as Construction Manager for the Project until the Construction Manager's remaining duties hereunder have been satisfied. The Construction Manager assumes full responsibility to the Owner for the negligent acts and omissions of the Construction Manager's consultants or others employed or retained by the Construction Manager in connection with the Project.

Execution of this Agreement by the Construction Manager constitutes a representation that the Construction Manager has become familiar with the Project site and the local conditions under which the Project is to be implemented.

Any and all Basic Services not outlined in Article 5: Construction Manager's Services shall be those contained in the attached proposals (Exhibit X) from the Construction Manager. Construction Manager's proposals are attached for scope-of-work and Construction Manager Responsibilities only. By execution of this agreement, additional terms and conditions that may be included in the Construction Manager's proposal are not considered part of this agreement.

3.2.1 Project Management Information System (PMIS)

The Owner has implemented an electronic PMIS, "e-Builder", an internet-based information and project communication system that will allow the entire project team to collaborate in a centralized and secure repository for all projects.

The Construction Manager shall utilize the PMIS during all phases of the project, unless directed otherwise by the Owner. All project specific correspondence, workflow processes, and documentation will be stored and routed within the PMIS.

The Construction Manager, or those direct-employee(s) responsible, on each project will be expected to participate in the necessary training to use the PMIS effectively. Periodic training sessions on the PMIS will be provided by the Owner. Registration will be through Penn State's Learning Resource Network (LRN). It is the responsibility of the Construction Manager to coordinate with the Owner regarding the training schedule and to register via the LRN. All costs for personnel time, travel, meals, and lodging to attend the training shall be borne by the Construction Manager and, as such, will not be reimbursed by the Owner.

The Construction Manager shall obtain, at their own cost, the necessary equipment and web connections to access and utilize the PMIS. The Construction Manager will not incur any registration fees or licensing costs to utilize the PMIS.

The Owner will not entertain or acknowledge any amendment requests by the Construction Manager for claimed inefficiencies or other costs related to the implementation and subsequent use of the PMIS.

It is expected that the Construction Manager also monitor use by Prime Contractors to ensure workflows and processes are being used to the satisfaction of the Owner.

3.3 BEST EFFORTS and COLLABORATION

The Construction Manager, recognizing the relationship of trust and confidence established between the Construction Manager and the Owner by the terms of this Agreement, undertakes to furnish its best skill and judgment and to cooperate loyally with the Professional in forwarding the interests of the Owner, and to have no pecuniary interest, direct or indirect, in the Agreement, or in its performance other than as disclosed in this Agreement.

The Construction Manager agrees to promote a collaborative Project Team environment. By forming a collaborative Project Team, the parties intend to gain the benefit of an open and creative learning environment, where members are encouraged to share ideas freely in an atmosphere of mutual respect and tolerance. Project Team members shall work together and individually to achieve transparent and cooperative exchange of information in all matters relating to the Project and to share ideas for improving project delivery. Team members shall actively promote harmony, collaboration and cooperation among all entities performing on the Project.

The Construction Manager is expected to provide leadership in the implementation of the following lean principles:

- A3 Thinking and Decision Making
- Construction Stage Big Room Environment for Prime Contractors
- Risk and Opportunity Register during Design and Construction
- Last Planner System during Design and Construction
- Target Value Delivery throughout Design Process
- Retrospectives

ARTICLE 4: DEFINITIONS

The term "Project" shall comprise the Work defined by the Contract Documents and may include Work by the Owner or other separate contractors, Trade Contractors, Sub-Trade Contractors, or the Professional.

The term "Construction Management Services" shall mean whatever is done by or required of the Construction Manager to perform and complete its duties under this Agreement.

The term "day" shall mean calendar day unless otherwise specifically designated.

"eBuilder" is a web-based, electronic project management information system (PMIS). It will be used by the Construction Manager and all members of the project team to post, review, respond, submit, and collaborate

with the Owner and with other team members using the features and/or workflow processes and/or forms identified within this document.

The "Trade Contractor" is a person or organization who contracts under the Owner for a portion of the Work defined in the Contract between the Owner and the Professional. The Trade Contract may be directly with the Owner or through a subcontract with another Trade Contractor.

The "Drawings" are the graphic portion of the Contract Documents generally consisting of plans, elevations, sections, details, diagrams, and schedules of the Work.

The "Specifications" are the written portion of the Contract Documents generally outlining the requirements for materials, equipment, construction systems, methods, standards, workmanship, and performance necessary to properly complete the work.

The "Project Manual" is the document assembled consisting of all the written portions of the Work including the Specifications, bidding requirements, sample forms, General Conditions and Special Requirements.

ARTICLE 5: CONSTRUCTION MANAGER'S SERVICES

The Construction Manager will perform the following services under this Agreement.

5.1 PRECONSTRUCTION PHASE

5.1.1 Consultation During Project Development: Schedule and attend regular or biweekly meetings with the Professional and Owner during design development to advise on site use and improvements, selection of materials, building systems and equipment. Provide recommendations on construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs or materials, preliminary budgets, and possible economies and schedule improvements.

5.1.2 Scheduling: Develop a Project Master Schedule that coordinates and integrates the Professional's design efforts with construction schedules. Update monthly the Project Master Schedule, incorporating a detailed schedule for the construction operations of the Project, including realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products requiring long lead-time procurement. Include the Owner's occupancy requirements showing portions of the Project having occupancy priority.

Lead the implementation of the Last Planner System during the design phase to assist in schedule development and tracking.

5.1.3 Project Budget: Prepare a Project budget as soon as major Project requirements have been identified, and update monthly for the Owner's approval. Prepare monthly budgets and estimates during the design phase of the project in accordance with the Target Value Delivery process. Update and refine these estimates for the Owner's approval as the development of the Drawings and Specifications proceeds and advise the Owner and the Professional if it appears that the Project Construction Budget will not be met and make recommendations for corrective action.

5.1.4 Building Information Modeling (BIM): The Penn State Office of Physical Plant Building Information Modeling (BIM) Contract Addendum applies to this project. Requirements described in the *OPP BIM Contract Addendum* shall be complied with fully; see *OPP BIM Contract Addendum* at <http://opp.psu.edu/intranet/bim-standards>. Exceptions or modifications to the Addendum will be applied by written amendment. Key payment thresholds tied to BIM execution and deliverables are described in the *OPP BIM Contract Addendum*. Requests for payment beyond the specified thresholds are not authorized until the specific BIM requirements are completed and accepted by the Owner.

- 5.1.5 Coordination of Contract Documents: Review the Drawings and Specifications with the Professional and Owner as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility, schedules, or create construction conflicts, without assuming any of the Professional's responsibilities for design.
- 5.1.6 Construction Planning: Schedule and recommend for purchase all materials and equipment requiring long lead-time procurement and coordination preparation of necessary Contract documents by the Professional. Expedite and coordinate delivery of the long lead-time purchases and schedule the purchase and coordinate the delivery of Owner-furnished equipment as requested by the Owner.
- Determine the appropriate division of documents into fast-track bid packages if requested by the Owner and review the drawings and specifications to: (1) ascertain if areas or jurisdiction overlap, (2) verify that all Work has been included, and (3) allow for phased construction.
- After consultation with the Owner and the Professional regarding the division of Work in the Drawings and Specifications, make recommendations to facilitate the bidding and awarding of Trade Contracts, allowing for phased construction, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities.
- Review Drawings and Specification with the Professional to eliminate areas of conflict and overlapping in the Work to be performed by the various Trade Contractors and prepare prequalification criteria for bidders.
- 5.1.7 Cost Control: Develop and monitor an effective system of Project Cost Control. Develop cash flow reports and forecasts as needed. Identify variances between forecasted or actual costs and estimated costs, and advise Owner and Professional whenever projected cost differs from budget. Provide value engineering as needed or when requested by Owner.
- 5.1.8 Special Consultants: If requested, assist the Owner in selecting and retaining the professional services of special consultants (i.e., testing lab, surveyors, etc.) and coordinate the services.
- 5.1.9 Communications: Refer all questions relative to interpretation of the design intent to the Professional in writing and insure communications between the Owner, Construction Manager and Professional.
- 5.1.10 Reports: Record the progress of the Project monthly, and record minutes of all meetings in a format acceptable to the Professional and the Owner and insure distribution to all appropriate parties. Produce and publish a monthly project update in an A3 format as approved by the Owner.
- 5.1.11 Prevention through Design (PtD): The Construction Manager shall lead PtD efforts during the design and construction phase. The Construction Manager shall schedule and facilitate three (3) focused PtD sessions during the design phase and record decisions and discussions.

5.2 PROCUREMENT PHASE

- 5.2.1 Bidding and Award of Trade Contracts: All Work will be competitively bid. The Project Team will determine which trades require prequalification by the Construction Manager. The Construction Manager shall prequalify all bidders per an agreed upon prequalification process by the Project Team. The Construction Manager is to review all bidders lists with Owner and Professional for approval before proceeding, assist in establishing bidding schedules, develop bidding front end documentation, issue bidding documents, and conduct pre-bid conferences to familiarize bidders with the documents and with any special systems, materials, methods or conditions, and is responsible for bid analyses, bid-verification, and scope-review efforts. The Construction Manager will then make written award recommendations to the Owner and Professional.
- 5.2.2 Diverse Business Enterprise: (DBE Program): Develop and implement a system to maximize DBE participation. The Owner has set a goal of **15%** combined utilization of DBE professionals, contractors

and suppliers. The Construction Manager shall track and monitor the DBE participation and submit a DBE Utilization report with each certificate of payment request. In coordination with the Owner, conduct an Open House and hold workshops in an effort to increase DBE participation. On State delegated projects, the Construction Manager shall follow all protocol established by the Pennsylvania Department of General Services.

5.3 CONSTRUCTION AND POST-CONSTRUCTION PHASE

5.3.1 Project Control: Direct and monitor the Work of the Trade Contractors and coordinate the Work with the activities and responsibilities of the Owner, Professional, and Construction Manager to complete the Project in accordance with the Owner's objectives.

5.3.2 Project Staffing: Maintain a competent full-time staff at the Project site to coordinate and provide general direction of the Work and progress of the Trade Contractors on the Project. It is intended that the Project Manager for Construction and the Field Superintendent for Construction indicated on the Construction Management Services Proposal Form and presented at the interview meeting will be considered to be full-time staff at the Project site from start to final completion. Changes in the above-mentioned staff shall only be made with the concurrence of the Owner. A request for change in staff will be presented in writing to the Owner. Establish on-site organization and lines of authority in order to carry out the overall plans of the Project Team.

The Construction Manager to provide one (1) FTE Safety Representative as part of their project staffing.

The Construction Manager shall implement a Big Room site office for the Trade Contractors for all key personnel and staffing.

5.3.3 Communication: Establish procedures for coordination among the Owner, Professional, Trade Contractors, and Construction Manager with respect to all aspects of the Project and implement such procedures to ensure that all parties receive the correct information.

5.3.4 Progress Meetings: Schedule and conduct biweekly progress meetings at which Trade Contractors, Owner, Professional, and Construction Manager can discuss jointly such matters as procedures, progress, problems, and scheduling. Schedule and conduct biweekly meetings with Owner and Professional to discuss progress, resolve problems, and update schedule.

5.3.5 Scheduling: Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started or incomplete and recommend to the Owner and Trade Contractors adjustments in the schedule to meet the Contract completion date. Document all changes in schedule. Update schedule on a monthly basis or as needed. Determine the adequacy of the Trade Contractors' personnel and equipment and the availability of materials and supplies to meet the schedule, and take appropriate courses of action with Trade Contractors when requirements are not being met.

The Construction Manager shall manage and implement the Last Planner System to meet the scheduling requirements and to track commitments by Trade Contractors.

5.3.6 Change Orders: Develop and implement a system for the preparation, review, and processing of Change Orders. Recommend necessary or desirable changes to the Owner and the Professional, review requests for changes in Scope of Work, submit recommendations to the Owner and the Professional, and assist in negotiating changes in cost and/or time. Maintain a detailed change-order log.

5.3.7 Payments to Trade Contractors: Develop and implement a procedure for review of payment applications by Trade Contractors for progress and final payments.

- 5.3.8 Permits and Fees: Assist the Owner and Professional in obtaining a building permit. Assist the Owner and Professional in obtaining all other necessary permits for construction and permanent improvements, including permits and inspection of temporary facilities required to be obtained. Assist in obtaining approvals from all the authorities having jurisdiction.
- 5.3.9 Quality Control and Inspection: Inspect the Work of Trade Contractors for defects and deficiencies in the Work. The Owner and/or Professional will co-inspect as deemed necessary by the Owner. The Construction Manager to establish a written Quality Assurance/Quality Control Plan for the project and update throughout the project as required.
- 5.3.10 Safety: Set up a written Site Specific Job Safety Program and review the safety programs of each of the Trade Contractors and make appropriate recommendations. In making such recommendations and carrying out such review, the Construction Manager shall be required to make regular and complete inspections to check safety precautions and programs in connection with the Project. Safety Program will incorporate on-site review on a weekly basis with Trade Contractors. The performance of such services by the Construction Manager shall not relieve the Trade Contractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work.

Construction Manager and each Trade Contractor shall be obligated to adhere to the safety requirements as outlined in the following: Contractor Safety Requirements, The Pennsylvania State University, Office of Physical Plant, Design and Construction Standards, Division 00, Sub-Section 00 01 00.

- 5.3.11 Document Interpretation: Assist in the coordination of all Requests for Information (R.F.I.). Maintain a log of R.F.I.'s and responses.
- 5.3.12 Shop Drawings and Samples: In collaboration with the Professional, establish and implement procedures and schedules for expediting the processing and approval of shop drawings and samples in accordance with the procedures outlined in the General Conditions of the Trades Contracts. Maintain a detailed shop-drawing, submittal, and samples log.
- 5.3.13 Reports and Project Site Documents: Record the progress of the Project. Submit written progress reports to the Owner and the Professional including information on the Trade Contractors' Work and the percentage of completion. Maintain a written daily construction log and make available to the Owner and/or Professional when requested. The daily log shall include but not be limited to the following: record of weather, Trade Contractors' work at the site, the number and type of workers on site, work accomplished, problems encountered, unusual events, and other relevant data that the Owner and Professional may reasonably require. Record job progress monthly using photographs and written reports. Maintain at the Project site, on a current basis, records of all necessary Contracts, Drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. Obtain data from Trade Contractors and maintain on site a current set of As-Built Drawings, Specifications and operation manuals. At the completion of the Project, deliver all such records to the Professional for the Professional's review and submittal to the Owner in the preferred format approved by the Owner. The Construction Manager is to assist the Owner in the assembly of monthly project reports, as required by and outlined in the DGS Delegation Agreement pertaining to the project.

In addition, please provide a summary monthly update on the project in A3 format as approved by the Owner.

- 5.3.14 Commissioning and Start-Up: With the Owner's operating/maintenance personnel, direct the checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up, testing, demonstration and instruction by the Trade Contractors. Schedule all of these with the Owner and the Professional. Provide coordination of Commissioning Agent services.

- 5.3.15 LEED: Assist the Professional in reviewing, assembling, and submitting all documentation required for achieving the LEED target certification level that has been established for the project.
- 5.3.16 Close-Out: Participate in Substantial Completion and Final Inspections of all trades contracts. Coordinate with the Professional in the production of the appropriate punch-lists, and provide follow-up to ensure that all items are completed to the satisfaction of the Owner. Assist, as needed, in the acquisition of the Certificate of Occupancy. Participate in the commissioning process, the level of involvement of which is indicated in the attached proposal of the Construction Manager.

5.4 ADDITIONAL SERVICES

- 5.4.1 Additional services, if requested by the Owner, will be provided by the Construction Manager only upon written agreement between the Owner and Construction Manager defining the extent of such additional services and the amount and manner in which the Construction Manager will be compensated for such additional services.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- 6.1 The Owner shall provide full information regarding the Owner's requirements for the Project to the best of the Owner's ability.
- 6.2 The Owner shall designate a representative who shall be fully acquainted with the Project and has authority to approve revisions to the project construction budgets, approve Change Orders, render decisions promptly and furnish information expeditiously.
- 6.3 The Owner shall furnish for the site of the Project all necessary surveys describing the physical characteristics, soil reports and subsurface investigations, legal limitations, known utility locations and a legal description as may be necessary.
- 6.4 The Owner will furnish to the Construction Manager reproducible drawings and specifications necessary for the execution of the work.
- 6.5 The Owner shall provide Builder's Risk insurance for the Project.
- 6.6 If the Owner becomes aware of any fault or defect in the work or nonconformance with the drawings and Specifications, the Owner shall give prompt written notice thereof to the Construction Manager. The Construction Manager shall take immediate steps to correct such fault or defect.
- 6.7 The Owner shall communicate with the Trade Contractors through the Construction Manager or per agreed upon protocols by the Project Team.

ARTICLE 7 – CONSTRUCTION MANAGER'S EXPENSES

7.1 BILLABLE HOURLY RATES

- 7.1.1 Billable rates per hour are agreed upon rates for the principals, associates and employees of the firm who are assigned to and are productively engaged on the Project, including clerical employees. Billable rates for the Construction Management staff are listed in Exhibit X. Billable rates are not subject to audit.
- 7.1.2 The billable rates per hour for the Construction Manager's employees shall include mandatory and customary benefits such as employment taxes, statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

7.2 REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to compensation for Basic and Additional Services and include those expenses for which the Construction Manager shall be reimbursed a not-to-exceed amount for direct "out-of-pocket" costs. No mark-up shall be permitted on reimbursable expenses by the Construction Manager or by any subconsultant(s).

- 7.2.1 Reimbursable expenses shall be submitted with supporting documentation, which shall include detailed, itemized receipts.
- 7.2.2 Reimbursable expenses for individual travel, meals, and lodging are limited to individuals under the direct employ of the Construction Manager or approved consultants.
- 7.2.3 Air travel expenses for the Construction Manager or those under direct employ of the Construction Manager shall be approved in advance by the Owner.
- 7.2.4 Construction Manager will be reimbursed for allowable travel expenses submitted in accordance with PSU's Travel Policies and Procedures, URL <http://travel.psu.edu/policies> Where requested and authorized by the Owner, the following shall be reimbursable:
 - 7.2.4.1 Lodging: Construction Manager will be reimbursed on an actual expense basis. Receipts will be required. The Construction Manager should be cost-conscious in the selection of lodging. Expense should not exceed the normal maximum for a single room based on the allowable rate for lodging; see U.S. General Services Administration Per Diem Rates, Lodging Rates.
 - 7.2.4.2 Meals and Incidentals: Construction Manager will be reimbursed on an actual expense basis. Receipts will be required. See U.S. General Services Administration Meals & Incidentals (M&IE Rates) for maximum allowable rates. Alcohol is not reimbursable.
 - 7.2.4.3 Use of Vehicles: Use of vehicles is reimbursable at the current U.S. General Services Administration Mileage Reimbursement Rate.
- 7.2.5 Expense of reproductions including reproductions of record drawings, postage and handling of Drawings, Specifications, and other documents including the preparation and distribution of all necessary bidding correspondence and documents, receipt of bid proposals, and construction contract preparation. Reproductions made for the Construction Manager's own use or review shall not be included.
- 7.2.6 Expense of renderings, models, mock-ups requested by the Owner, and/or discs for electronic format submissions of record drawings.
- 7.2.7 Expense for out-of-town and out-of-state travel, long distance communications, and any necessary fee or permit payment required and paid to any governing body or authority having jurisdiction over then project.
- 7.2.8 Expenses of specialized consultants identified as Additional Services in Article 5 of this Agreement.
- 7.2.9 Expenses incurred for setting up, operating and maintaining, and disassembling a project office at the site. All costs are to be approved in advance.
- 7.2.10 Costs for legal services arising from the prosecution of the services for issues not resulting from negligence by the Construction Manager. Prior to incurring any legal cost, Construction Manager must obtain written authorization from the Owner which will not be unreasonably withheld.

ARTICLE 8: COMPENSATION

8.1 FEE COMPENSATION

The Owner agrees to pay the Construction Manager as compensation for those Basic Services described in Article 5 a fee amount not to exceed _____ Dollars (\$ _____).

8.1.2 Payment for Basic Services will be made monthly by the Owner in proportion to the service actually performed.

8.2 GENERAL CONDITIONS COMPENSATION

The Owner agrees to pay the Construction Manager as compensation for the **General Conditions**, as outlined in the attached Proposal submitted by the CM an amount not to exceed _____ Dollars (\$ _____). All backup/substantiation of such costs shall be included with each request for payment.

8.2.1 CM STAFF COMPENSATION (Preconstruction and Construction Phase Services)

The Owner agrees to pay the Construction Manager as compensation for **CM Staff Costs** an amount not to exceed _____ Dollars (\$ _____).

8.2.1 All backup/substantiation of such costs shall be included with each request for payment.

8.2.2 TOTAL COMPENSATION

Total Compensation payable to the Construction Manager under this agreement shall not exceed _____ Dollars (_____).

8.3 ADDITIONAL PROVISIONS

8.3.1 Payments are due and payable forty-five (45) days from the date that the Construction Manager's invoice is approved by the Owner.

8.3.2 Submission of the Construction Manager's invoice for final payment and reimbursement shall further constitute the Construction Manager's representation to the Owner that, upon receipt from the Owner of the amount invoiced, all obligations of the Construction Manager to others, including its consultants, incurred in connection with the Project, will be paid in full.

8.3.3 The Owner or any of its duly authorized representatives, shall have access to any documents, books, paper, and records of the CM (which are directly pertinent to a specific grant program) for the purpose of making an audit, examination, excerpt and/or transcriptions. The Construction Manager shall maintain all required records for at least three years after the Owner makes final payment.

8.4 OWNER'S RIGHT TO WITHHOLD PAYMENT

8.4.1 In the event that the Owner becomes credibly informed that any representation of the Construction Manager provided pursuant to Article 8 is wholly or partially inaccurate, the Owner may withhold payment of sums then or in the future otherwise due to the Construction Manager until the inaccuracy, and the cause thereof, is corrected to the Owner's reasonable satisfaction.

8.5 CONSTRUCTION MANAGER'S RECORDS

Documentation accurately reflecting the time expended by the Construction Manager and its personnel and records of Reimbursable Expenses shall be maintained by the Construction Manager and shall be available to the Owner for review and copying upon request.

All Construction Manager's accounting records and associated back-up documentation shall be available for audit upon request by the Owner.

ARTICLE 9 - TERMINATION OF THE AGREEMENT

9.1 TERMINATION BY OWNER

Prior to, or during the performance of the Work, the Owner reserves the right to terminate the Contract for unforeseen causes including but not limited to court orders, real or perceived CM breach-of-contract, loss of funding, acts of the federal government to discontinue the Work, or any other reason the Owner deems necessary. Upon such an occurrence, the following procedures will be adhered to:

- 9.1.1 The Owner will immediately notify the Professional and the Construction Manager in writing, specifying the effective termination date of the Contract.
- 9.1.2 After receipt of the notice of termination, the Construction Manager shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - (1) Stop all work.
 - (2) Place no further trade contracts or orders.
 - (4) Cancel all material and equipment orders as applicable.
 - (5) Take action that is necessary to protect and preserve all property related to this Contract which is in the possession of the Construction Manager.
- 9.1.3 Within one hundred eighty (180) days of the date of the notice of termination, the Construction Manager shall submit a final termination settlement proposal to the Owner based upon costs up to the date of termination, reasonable profit on Work done only, and reasonable demobilization costs. All costs submitted under an Owner Termination shall be actual, measurable, and subject to audit. No reimbursement shall be made for home-office labor or overhead in any case after the date the contract is terminated. If the Owner agrees to pay for demobilization labor costs, those costs shall be at ACTUAL cost of labor plus actual payroll taxes, insurance, and non-discretionary fringe benefits with no markup for profit, overhead, multipliers or any other markup allowed. If the Construction Manager fails to submit the proposal within the time allowed, the Owner may determine the amount due to the Construction Manager because of the termination and shall pay the determined amount to the Construction Manager. Such compensation shall be the Construction Manager's sole and exclusive remedy for termination.
- 9.1.4 If the Construction Manager and the Owner fail to agree on the settlement amount, the matter will be handled as a dispute.

9.2 TERMINATION BY CONSTRUCTION MANAGER

If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager or a Trade Contractor or their agents or employees or any other persons performing any of the Work under a contract with the Construction Manager, then the Construction Manager may, upon ten (10) additional days written notice to the Owner and the Professional, terminate the Contract and the Owner shall pay the Construction Manager for all Work executed, including Construction Management fee earned to date associated with such Work or losses and reasonable expenses resulting from such termination.

If the cause of the work stoppage is removed prior to the end of the ten (10) day notice period, the Construction Manager may not terminate the Contract.

9.3 SUSPENSION OF WORK

The Owner may, at any time, direct the Construction Manager to suspend all work on the Project, or on any part thereof, pending receipt of further notice from the Owner. In all such cases, the Owner and the Construction Manager shall agree upon an appropriate phasing out of the work in such a manner that the work may be resumed with a minimum of added cost to the Owner.

9.4 WRITTEN NOTICE

Written notice shall be considered to have been duly given if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by United States mail to the last business address known.

ARTICLE 10 - MISCELLANEOUS PROVISIONS

10.1 APPLICABLE LAW

The interpretation and construction of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. In the event litigation arises out of this Contract, the parties agree to submit any claim to the competent courts of Centre County, Pennsylvania.

10.2 SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the successors and assigns of the parties hereto.

10.3 ASSIGNMENT

Neither the Owner nor the Construction Manager shall assign or in any manner transfer any right, duty or obligation under this Agreement.

10.4 ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both the Owner and the Construction Manager.

10.5 SUSPENSION OF WORK

The Owner may, at any time, direct the Construction Manager to suspend all Work on the Project, or on any part thereof, pending receipt of further notice from the Owner. In all such cases, the Owner and the Construction Manager shall agree upon an appropriate phasing-out of the Work in such a manner that the Work may be resumed with a minimum of added cost to the Owner, but in no event shall the Work be continued beyond the completion of the Preliminary Phase. If Work is suspended, compensation shall be paid for all Construction Manager Services provided to the date of suspension but no additional compensation shall be paid during the period of suspension.

10.6 RELEASE OF INFORMATION

The Construction Manager understands and agrees that the Owner may release to taxing authorities any and all information relating to the Work.

With prior written consent of the Owner, the Construction Manager shall have the right to include representation of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall not issue or disclose any information relating to the Project without prior written consent of the Owner.

10.7 THIRD PARTY

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the Owner or the Construction Manager.

10.8 OWNERSHIP AND USE OF DOCUMENTS

All studies, special requirements, cost estimates, and all other data compiled by the Construction Manager under this Agreement, shall become the property of the Owner, and may be used for any purpose desired by the Owner. The Construction Manager shall not be liable for any reuse of these documents by the Owner.

10.10 TAXES

The Construction Manager shall pay sales, consumer, use and similar taxes for the Work on portions thereof provided by the Construction Manager which are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

The Construction Manager is obligated to pay all Pennsylvania sales tax with the exception of those items for which an exemption might be claimed under Sales and Use Tax Regulation (S31.11--SS31.16).

The Construction Manager and each Trade Contractor shall agree to assign and transfer to the Owner all its rights to sales and use tax which may be refunded as a result of a claim for refund for material purchased in connection with this contract. The Construction Manager and each Trade Contractor further agrees that it will not file a claim for refund for any sales or use tax which is the subject of this assignment. The Construction Manager and each Trade Contractor shall incorporate this Owner's right to any and all Subcontracts.

ARTICLE 11 - SCHEDULE

The Work to be provided under this Contract shall be in accordance with the following schedule:

Start of Construction	_____
Substantial Completion	_____
Final Completion (completion of all punch list items)	_____

ARTICLE 12 - INSURANCE

12.1 Before commencing the Work and as a condition precedent to payment, the Construction Manager shall procure and maintain the following insurance, in amounts not less than that specified for each type:

12.1.1 WORKER'S COMPENSATION for statutory obligations imposed by workers' compensation and occupational disease laws. Employers' Liability insurance shall be provided with limits not less than:

- a) \$500,000 bodily injury by accident per accident
- b) \$500,000 bodily injury by disease policy limit
- c) \$500,000 bodily injury by disease per employee

12.1.2 BUSINESS AUTOMOBILE LIABILITY (bodily injury liability and property damage liability) for all owned, leased, hired, non-owned vehicles with limits not less than \$1,000,000 Combined Single Limit.

12.1.3 COMMERCIAL GENERAL LIABILITY INSURANCE including coverage for bodily injury, property damage, and personal and advertising injury, for premises and operations, products and completed operations, and contractual liability arising from all operations, written on an occurrence basis with limits not less than:

FOR PROJECTS UNDER \$1,000,000

- a) Per occurrence: \$1,000,000
- b) General aggregate: \$2,000,000
- c) Products/completed operations aggregate: \$2,000,000
- d) Personal and advertising injury limit: \$1,000,000
- e) Medical Expense Limit: \$10,000

The Construction Manager shall maintain completed operations liability insurance for not less than one year after Substantial Completion, or as required by the Contract Documents, whichever is longer.

FOR PROJECTS \$1,000,000 AND OVER

- a) Per occurrence: \$5,000,000
- b) General aggregate: \$5,000,000
- c) Products/completed operations aggregate: \$5,000,000
- d) Personal and advertising injury limit: \$5,000,000
- e) Medical Expense Limit: \$10,000

The Construction Manager shall maintain completed operations liability insurance for not less than two years after Substantial Completion, or as required by the Contract Documents, whichever is longer.

12.1.4 PROFESSIONAL LIABILITY INSURANCE: Where professional services are being provided by licensed and non-licensed professionals, the Construction Manager shall secure and maintain, for itself or, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement (including, but not limited to, acts, errors, or omissions of the company and its employees), which shall be written for not less than One Million dollars (\$1,000,000) or the total of the Design Fee portion of the Contract, whichever is greater, per claim and in the aggregate. The Professional Liability insurance shall include prior acts coverage sufficient to cover all services rendered by the Construction Manager. This coverage shall be continued in effect for 3 year(s) after the Date of Substantial Completion.

12.1.5 POLLUTION LIABILITY INSURANCE: If the nature of the Work involves professional services, evaluating, testing, remediation, abatement, removal, storage, and transportation of hazardous materials or substances or pollutants, the Construction Manager and those Subconsultants involved in such work shall obtain Pollution Liability insurance applicable to their work, for bodily injury and property damage with limits not less than:

FOR PROJECTS UNDER \$1,000,000

- a) Per occurrence or claim: \$1,000,000
- b) Aggregate: \$1,000,000

FOR PROJECTS \$1,000,000 AND OVER

- a) Per occurrence or claim: \$5,000,000
- b) Aggregate: \$5,000,000

The Pollution Liability insurance must include coverage for completed operations extending three (3) years after final acceptance of the project by the owner or such longer period as the contract

documents may require. The definition of property damage shall include clean-up costs. If the insurance is written on a claims-made basis, the policy retroactive date shall be prior to the start of the contractor's/supplier's/vendor's work, and the renewal policies shall maintain the same retroactive date.

- 12.1.6 The insurance limits required for the Employers' Liability, Business Automobile Liability and CGL coverage required under subsection 12.1 may be provided by a combination of primary and Excess or Umbrella Liability policies.
- 12.1.7 The Owner must be named on the Construction Manager's Commercial General Liability insurance as an additional insured.
- 12.1.8 The Construction Manager shall maintain in effect all insurance coverage required under subsection 12 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.
- 12.1.9 If the Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Construction Manager, or terminate this Agreement.
- 12.1.10 Insurance policies required under subsection 12.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 days before coverage is non-renewed by the insurance company and (b) within 10 business days after cancelation of coverage by the insurance company.
- 12.1.11 Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Construction Manager shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 12.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.
- 12.1.12 The Construction Manager's insurance shall be primary and non-contributory to the University's insurance.
- 12.1.13 Failure of the Construction Manager to procure, carry, and maintain the required insurance shall not relieve the Construction Manager, and any Subcontractor thereof, of any obligation or liability assumed under this Agreement, nor of any obligation or liability imposed by law.
- 12.1.14 Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Construction Manager.

12.2 PROPERTY INSURANCE

12.2.1 Builder's Risk Insurance Policy: Before commencing the Work, the Owner shall obtain and maintain a Builder's Risk Insurance Policy upon the entire Project for the full cost of replacement at the time of loss. In addition to the Owner, this insurance shall also name the Construction Manager, Subcontractors, Subsubcontractors, and Material Suppliers as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover risks of physical loss except those specifically excluded by the insurance policy, and shall insure (a) at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Professional) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and (b) damage resulting from defective design, workmanship or material and material or equipment stored offsite, onsite or in transit. This insurance policy shall provide for a waiver of subrogation in favor of the named insureds. This insurance shall remain in effect until final payment has been made or until no person or entity other than the

Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the insurance coverage required in this subsection. Before commencing the Work, upon request, the Owner shall provide evidence of the property and Builder's Risk insurance.

12.2.1.1 The Builder's Risk Insurance Policy has a deductible. If the Construction Manager suffers a Builder's Risk loss covered by this insurance, the Construction Manager shall be responsible for the first \$25,000 of such deductible. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. The Construction Manager's payment towards the deductible of a loss covered by this insurance will not exceed \$25,000 per occurrence.

12.2.2 If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Construction Manager before the Work is commenced. The Professional may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order. The Owner shall be responsible for all of the Construction Manager costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

12.2.2.1 If the Owner does not obtain insurance to cover the risk of physical loss resulting from Terrorism, the Owner shall give written notice to the Construction Manager before the Work commences. The Construction Manager may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors against such risk of loss, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order.

12.2.3 Owner and Construction Manager waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as the Construction Manager may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 12.2.1.

12.2.3.1 Risk of Loss: Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Construction Manager until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

12.3 OWNER'S INSURANCE

12.3.1 Business Income Insurance: The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

12.3.2 Owner's Liability Insurance: The Owner shall maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including loss of use and claims, losses and expenses arising out of the Owner's acts or omissions.

ARTICLE 13 - UNIVERSITY POLICIES

HR99 - Background Check Process The Construction Manager confirms that all employees (including the employees of any subconsultants/subcontractors) assigned to this project, and who conducted their work on Penn State premises, have had background checks that meet or exceed the University's standards for the type of work being performed. All background checks should be in accordance with the background check process for third-party employees outlined in Penn State Policy HR99 Background Check Process, <http://guru.psu.edu/policies/OHR/hr99.html>

AD85 and AD91 - Sexual and/or Gender-Based Harassment and Misconduct The University is committed to equal access to programs, facilities, admission and employment for all persons, in an environment free of harassment and free of discrimination. Conduct constituting harassment or discrimination in the University environment, as prohibited in University Policy AD85 and AD91, is subject to corrective action.

AD32 Smoking and Tobacco Policy Smoking and the use of tobacco are prohibited in and on all University owned or leased properties, facilities, and vehicles, per University Policy AD32.

SY45 Use of Unmanned Aircraft (“UA”)

If the Work involves the use of UA (Drones), and if UA use is approved by the Penn State Project Manager assigned to the job in question, the Construction Manager and those Subconsultants involved in UA use must follow all applicable federal regulations and the requirements of Penn State policy SY45 (<https://policy.psu.edu/policies/sy45>), which defines the requirements for use of UA on property owned or controlled by Penn State. In addition, a request to operate UA must be submitted to Penn State’s UA Operations Manager, as specified at: <https://www.research.psu.edu/UasOperations>. UA flight operations may not proceed until approval is granted by the UA Operations Manager.

ARTICLE 14 – PROVISIONS REQUIRED BY PENNSYLVANIA OR FEDERAL LAW

- 14.1 Nondiscrimination: So long as this Agreement is in effect, the Construction Manager agrees to the terms of the Nondiscrimination Clause attached hereto as Exhibit “A”.
- 14.2 Construction Manager Integrity Provisions and Disclosure of Financial Interest: So long as this Agreement is in effect, the Construction Manager agrees to the Construction Manager Integrity Provisions attached hereto as Exhibit “B”.
- 14.3 Construction Manager Debarment Provisions: Included in and made a part of this Agreement is Exhibit “C”, Certification and Stipulations Related to Debarment.
- 14.4 Tax Liability Provisions: Included in and made part of this Agreement is Exhibit “D”, Tax Liability Provisions.

THIS AGREEMENT entered into as of the day and year written above.

THE PENNSYLVANIA STATE UNIVERSITY
OWNER

Title

(Insert Name of CM Firm here)
CONSTRUCTION MANAGER

By: _____
Signature

Name: _____
(Please print name of person signing above)

Title: _____
(Please print title of person signing above)

Federal ID Number: _____

SAMPLE