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FORM OF AGREEMENT DGS 1-C

THE PENNSYLVANIA STATE UNIVERSITY
OWNER AND CONTRACTOR
CONTRACT

THIS AGREEMENT made this _____ day of _____
in the year Two Thousand Seventeen (2017) by and between

hereinafter called the Contractor 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 WORK AND THE DOCUMENTS FORMING THE CONTRACT

The Work forming the subject of this _____

Construction Contract is shown on Drawings titled:

It is described in the Specification, consisting of the General Conditions of the Contract, Articles 1 to 16 inclusive and:

The said Drawings and Specifications together with the General Conditions, as hereinabove described, are as fully a part hereof as if hereto attached or herein repeated.

ARTICLE 2: THE PROFESSIONAL

References to the Professional in any of the Contract Documents shall refer to the Professional 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 CONTRACTOR'S DUTIES AND STATUS

The Contractor agrees to furnish the labor, material, tools, machinery, equipment, facilities, and supplies to do all things necessary for the construction and completion of the Work; to furnish efficient business administration and superintendence; to have at the Work whenever needed and to keep upon it at all times an adequate supply of workmen and materials, and to secure its execution in the best, most workmanlike, expeditious and economical manner.

The Contractor, recognizing the relations of trust and confidence established between himself and the Owner by the terms of this Agreement, undertakes to furnish his 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 Contract or in its performance other than as disclosed in this Agreement.

The Contractor agrees to begin the Work contemplated by this Contract within Ten (10) days after notice from the Owner to proceed and to substantially complete the same, ready for the Owner's occupancy and use, within _____ calendar days after said Notice. Contractor agrees to complete all punch list items within _____ calendar days of substantial completion. Contractor agrees that time is of the essence of this Contract and if he shall fail to complete the Work within the time above specified, or such extension or extensions thereof as shall be granted, the Contractor shall pay Owner, as liquidated damages and not as a penalty for such failure, the sum of _____ Dollars (\$ _____) per day for each and every calendar day thereafter until such Work shall be substantially completed and ready for the Owner's occupancy and use. Provided, nevertheless, if the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or Professional, or of any employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Professional determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Professional may determine with the Owner's approval.

ARTICLE 4: OWNER'S REPRESENTATION

The Owner shall appoint a representative, who shall act for the Owner in the execution of this Contract.

ARTICLE 5: CONTRACT SUM

In consideration of the completion by the Contractor of the Work contemplated in this Contract in strict accordance therewith, the Owner agrees to pay to the Contractor the sum of

Dollars (\$ _____), which sum is not to be increased or diminished except as provided in Article 9 of the General Conditions relative to Changes in the Work.

ARTICLE 6: METHODS OF PAYMENTS

The Contractor shall each month submit to the Owner a statement in detail showing the amount of Work performed in the preceding calendar month, according to Article 11 of the General Conditions. Payments shall be made on valuation of Work done based on an approved Schedule of Values to be submitted by the Contractor to the Owner through the Professional of the quantities aggregating the total of the Contract, prior to the first application for payment. The Schedule of Values shall, when approved by the Professional, be used as a basis for determining the percentage of the Contract sum comprising each Certificate of Payment.

Payments shall be made on the basis of 94% of the approved monthly schedule of Work performed as hereinbefore determined.

Thirty (30) days after this Contract shall have been fully performed, the Professional shall issue a certificate for any balance due subject to the provisions of Article 11 of the General Conditions.

ARTICLE 7: LIENS/PERFORMANCE BOND

Notwithstanding and in addition to the provisions relative to liens set forth in Paragraph 11.8 of the General Conditions of the Contract, the parties hereto have executed a Waiver of Liens / Stipulation Against Liens Agreement, and Contractor has purchased a payment bond which shall serve as a guarantee of payment for the work, services, labor, materials and/or equipment provided by any and all subcontractors. Contractor hereby specifically waives all lien rights of subcontractors, as that term is defined under the Pennsylvania Mechanics' Lien Law of 1963. Contractor hereby covenants, promises and agrees that no mechanics' or materialsmen's lien or claim, or any other lien or claim, will be filed or maintained on the Property, or any grounds or curtilages appurtenant thereto, or any other structure or property owned by the Owner, either by Contractor or any subcontractor, for or on account of any work, labor or materials supplied by any

subcontractor in the performance of the Contract, or under any supplemental contract for extra work, in the erection, construction or completion of the improvements to the Property
The Contractor agrees to begin the Work contemplated by this Contract within Ten (10) days after notice from the Owner to proceed and to substantially complete the same, ready for the Owner's occupancy and use, on or before _____. Contractor agrees to complete all punch list items by _____. Contractor agrees that time is of the essence of this Contract and if he shall fail to complete the Work within the time above specified, or such extension or extensions thereof as shall be granted, the Contractor shall pay Owner, as liquidated damages and not as a penalty for such failure, the sum of _____ and 00/100 Dollars (\$) _____) per day for each and every calendar day thereafter until such Work shall be substantially completed and ready for the Owner's occupancy and use. Provided, nevertheless, if the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or Professional, or of any employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Professional determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Professional may determine with the Owner's approval.

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In consideration of the completion by the Contractor of the Work contemplated in this Contract in strict accordance therewith, the Owner agrees to pay to the Contractor the sum of

Dollars (\$), determined as _____, which sum is not to be increased or diminished except as provided in Article 9 of the General Conditions relative to Changes in the Work.

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Contractor or any subcontractor, for or on account of any work, labor or materials supplied by any subcontractor in the performance of the Contract, or under any supplemental contract for extra work, in the erection, construction or completion of the improvements to the Property.

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.1 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.

8.2 Successors and Assigns

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

8.3 Assignment

Neither the Owner nor the Contractor shall assign, sublet or in any manner transfer any right, duty, or obligation under this Agreement without prior written consent of the other party.

8.4 Provisions Required By Pennsylvania Law or Federal Law

8.4.1 Provisions Deemed Inserted Each and every provision required to be inserted in Contractor Agreements by the law of Pennsylvania, or the lawful regulations of any agency of the Commonwealth, and, if the Project involves the use of federal funds, by any law of the United States of America or the lawful regulations of any agency thereof applicable to this Agreement, are included in the Agreement by reference, and this Agreement shall be read, interpreted, and enforced as if such provisions were set forth therein in full.

8.4.2 Nondiscrimination So long as this Agreement is in effect, the Contractor agrees to the terms of the Nondiscrimination Clause attached hereto as Exhibit "A."

8.4.3 Contractor Integrity Provisions and Disclosure of Financial Interest So long as this Agreement is in effect, the Contractor agrees to the Contractor Integrity Provisions attached hereto as Exhibit "B."

8.4.4 Contractor Responsibility Provision Included in and made a part of this Agreement is Exhibit "C," Contractor Responsibility Provision.

8.4.5 Tax Liability Provisions Included in and made part of this Agreement is Exhibit "D," Tax Liability Provisions.

8.4.6 Trade Practice Act Included in and made part of this Agreement is Exhibit "E," Trade Practices Act Contract Clause.

8.4.7 Steel Product Procurement Act Included in and made part of this Agreement is Exhibit "F," Steel Products Procurement Act Contract Clause.

8.4.8 Public Works Contractor's Bond Law Included in and made part of this Agreement is Exhibit "G," Public Works Contractor's Bond Law of 1967 Contract Clause.

8.4.9 Pennsylvania Prevailing Wage Act Included in and made part of this Agreement is Exhibit "H," Pennsylvania Prevailing Wage Act Contract Clause.

8.4.10 Small Diverse Business Requirements Included in and made part of this Agreement is Section "I," Small Diverse Business Requirements.

8.5 Release of Information

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

8.6 Background Check Policy

The Contractor confirms that all employees (including the employees of any subconsultants/subcontractors) assigned to this project and who conduct 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 per the background check process for third-party employees outlined in PSU Policy HR99 Background Check Process (<http://guru.psu.edu/policies/OHR/hr99.html>).

8.7 Social Responsibility / Contractor Conduct

A. Fulfilling the mission of The Pennsylvania State University for those we serve requires the highest standards of integrity, responsibility, and respect, and we encourage our contractors/suppliers to aspire to those same standards, particularly when on campus or engaging with members of the University community. The University has adopted the [Global Sullivan Principles of Social Responsibility](#). We also encourage our contractors/suppliers to adopt and follow these principles.

B. 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, is subject to corrective action.

ARTICLE 9: SMALL DIVERSE BUSINESS PARTICIPATION

The Department has established one Minimum Participation Level (MPL) for utilization of Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), Veteran Business Enterprises (VBEs), and Service-Disable Veteran Business Enterprises (SDVBEs) (together referred hereinafter as Small Diverse Businesses) subcontractors, suppliers, and manufacturers for this project which is set forth in the Notice to Bidders. The Contractor's selected option (options are more fully described in the Notice to Bidders) regarding MPL for Small Diverse Businesses is:

- Opt-in – A contractor selecting “Opt-in” agrees to meet or exceed the Project’s MPL as of the date of the Close-out Inspection of the project.
- Good Faith Effort – A Contractor selecting “Good Faith Effort” agrees to document its use of reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses for all subcontracts and purchase orders greater than \$10,000 throughout the duration of the Project. PSU reserves the right to request submission of this documentation at any time during the project.
- Not applicable – The Award amount does not exceed \$50,000.

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

ARTICLE 10: PUBLIC WORKS EMPLOYMENT VERIFICATION ACT

As a precondition to the award of the contract for the Work described herein, Contractor must complete the Commonwealth of Pennsylvania ‘Public Works Employment Verification Form’ (“Form”) and provide a copy to Owner.

Furthermore, by execution of this Agreement, the Contractor hereby affirms as follows:

(1) Contractor is presently and shall remain in compliance with the Pennsylvania Public Works Employment Verification Act ("the Act") through utilization of the Federal E-Verify Program ("EVP") operated by the United States Department of Homeland Security.

(2) Contractor will ensure that all contracts with subcontractors contain notification of the applicability of the Act, information regarding the use of EVP, and either a copy of the Form or a reference to the Pennsylvania Department of General Services website at www.dgs.state.pa.us, where the Form may be obtained. Contractor will further ensure that prior to beginning onsite or offsite work, every subcontractor shall submit a completed Form to the Owner.

(3) Contractor and subcontractors shall utilize EVP to verify the employment eligibility of each new employee hired, whether the new employee will be performing onsite or offsite work, within five (5) business days of the employee's start date and shall maintain documentation of continued compliance with the Act for the duration of this Agreement.

(4) Contractor and subcontractors shall cooperate with Owner and Pennsylvania Department of General Services in the event of an audit arising under the Act.

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

THE PENNSYLVANIA STATE UNIVERSITY
OWNER

[SEAL]
Title

ATTEST, Secretary

Date of Signature/Execution: _____

CONTRACTOR

[SEAL]
Signature

ATTEST, Secretary

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

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

Federal ID No. _____