

# **Form of Agreement 1-P**

THE PENNSYLVANIA STATE UNIVERSITY

OWNER AND PROFESSIONAL

AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_

in the year Two Thousand \_\_\_\_\_, by and between THE PENNSYLVANIA STATE UNIVERSITY, a state-related institution and instrumentality of the Commonwealth of Pennsylvania subject to Pennsylvania nonprofit corporation laws, having its principal offices at University Park, Centre County, hereinafter called the "Owner," and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

hereinafter called the "Professional," for the following Project:

\_\_\_\_\_  
\_\_\_\_\_

PSU Project No. \_\_\_\_\_

In consideration of the promises set forth herein, and with intent to be legally bound, the parties agree to the terms set forth within this Agreement.

## TABLE OF CONTENTS

### DEFINITIONS

#### ARTICLE 1: PROFESSIONAL'S RESPONSIBILITIES

- 1.1 General Responsibilities
- 1.2 Schematic Phase
- 1.3 Design Development Phase
- 1.4 Construction Document Phase
- 1.5 Bidding Phase
- 1.6 Construction Phase
- 1.7 Electronic Project Management Information System (PMIS)

#### ARTICLE 2: ADDITIONAL RESPONSIBILITIES OF PROFESSIONAL

- 2.1 Compliance
- 2.2 Cooperation with Local Bodies
- 2.3 Proprietary Items, Copyrights, Patents, Royalties
- 2.4 Columbia Gas High Pressure Gas Line (HPGL), University Park Campus only

#### ARTICLE 3: OPTIONAL ADDITIONAL SERVICES

- 3.1 Project Representation
- 3.2 Revisions To Documents Prior To Construction Phase
- 3.3 Preplanning
- 3.4 Specialized Consultants

- 3.5 Surveys
- 3.6 Special Studies
- 3.7 Other Services

ARTICLE 4: INDEMNIFICATION

ARTICLE 5: INSURANCE

- 5.1 Liability Insurance
- 5.2 Property Insurance
- 5.3 Owners Insurance

ARTICLE 6: OWNER'S RESPONSIBILITIES

- 6.1 Basic Information
- 6.2 Surveys
- 6.3 Geotechnical Engineering Services
- 6.4 Miscellaneous Tests, Inspections, and Reports
- 6.5 Approval or Disapproval of Design Work
- 6.6 Owner Response
- 6.7 Notice of Noncompliance
- 6.8 Copies of Owner's Documents
- 6.9 Preconstruction Services

ARTICLE 7: CONSTRUCTION COST

- 7.1 Project Cost Determination
- 7.2 Notification
- 7.3 Owner Options

ARTICLE 8: OWNERSHIP AND USE OF DOCUMENTS

ARTICLE 9: PROFESSIONAL'S EXPENSES

- 9.1 Billable Hourly Rates
- 9.2 Reimbursable Expenses
- 9.3 Cost for Consultants

ARTICLE 10: COMPENSATION AND PAYMENT

- 10.1 Compensation and Payment
- 10.2 Construction Cost Allocation
- 10.3 Optional Additional Services Compensation
- 10.4 Payment Procedures
- 10.5 Owner's Right to Withhold Payment

ARTICLE 11: TERMINATION, ABANDONMENT, SUSPENSION, REACTIVATION

- 11.1 Termination by Owner
- 11.2 Compensation in the Event of Termination
- 11.3 Suspension of Work
- 11.4 Reactivation of Work

ARTICLE 12: MISCELLANEOUS PROVISIONS

- 12.1 Dispute Resolution/Applicable Law
- 12.2 Successors and Assigns
- 12.3 Assignment
- 12.4 Extent of Agreement
- 12.5 Third Party
- 12.6 Hazardous Material
- 12.7 Promotional Material
- 12.8 Terms/General Conditions
- 12.9 Social Responsibility and Professional Conduct
- 12.10 Conflict of Interest

- 12.11 Background Check Policy
- 12.12 Amendments

## ARTICLE 13: SCHEDULE OF EXHIBITS

### **DEFINITIONS:**

**Contract Documents** consist of the General Conditions of the Contract, Drawings, Specifications, Addenda issued prior to receipt of Trade Contract bids, Form of Proposal, other documents listed in the Agreement and those modifications to the Contract as follows: Owner's written authorization to the Contractor for changes to the Scope of Work, a Change Order, and a written order for a minor change in the Work issued by the Professional.

**Contractor** means the person or entity retained by the Owner to perform Work for the project and includes the Contractor's Representative.

**Construction Budget** means the project construction cost limit established by the Owner.

**Construction Cost Estimate** means a detailed breakdown of all costs associated with the scope of work required to meet the project requirements projected to the mid-point of construction.

**eBuilder** is a web-based, electronic project management information system (PMIS). It will be used by the Professional 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.

**Final Completion** means the point at which the project is fully completed in accordance with the Contract Documents (this includes *all* physical/construction obligations, administrative obligations, and punch list obligations).

The **Owner** is 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".

**The Pennsylvania State University Design and Construction Standards** means those design and construction standards, as set forth in the manual of Design and Construction Standards, prepared by the University to guide Architects and Engineers, hereinafter referred to as the Professional, commissioned to design buildings and other facilities for The Pennsylvania State University. The material included in this manual shall be applied in the preparation of documents for the design and construction of new buildings and renovations to existing physical facilities. The manual of Design and Construction Standards is located on the Office of Physical Plant web page <http://opp.psu.edu/>

The **Professional** is the person lawfully licensed to practice architecture or engineering, or the firm employed to provide architectural or engineering services, for the referenced project. The term "Professional" shall mean the Professional or the Professional's authorized representative.

The **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 **Scope of Work** means the work reasonably contemplated, required, implied, or reasonably inferable by the Contract Documents, and as defined in the Request for Proposal, or normal standards of the building trades, whether or not explicitly contained in the Contract Documents.

**Services** means the services provided by the Professional and/or by consultants retained by the Professional for the Project.

**Substantial Completion** shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with the Contract Documents that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose.

**Work** means the construction and services necessary or incidental to fulfill the Contractor's or Professional's obligations for the Project in conformance with the agreement between the Owner and Contractor or the Owner and Professional.

## **ARTICLE 1: PROFESSIONAL'S RESPONSIBILITIES**

### **1.1 General Responsibilities**

**1.1.1** The Professional shall furnish or provide the architectural and engineering services as outlined herein, and any other relevant data, specifications or documents, as necessary for a complete project. The Professional shall expeditiously perform said services in a manner consistent with professional skill, care, and the orderly progress of the work. In carrying out all obligations pursuant to this Agreement, including the furnishing of Construction Documents, the Professional shall in all respects conform to the applicable professional standard of care.

**1.1.2** By executing this Agreement, the Professional represents to the Owner that the Professional possesses the requisite skill, expertise, and credentials to perform the required services, and that Professional is licensed to practice by all public entities having jurisdiction over the Professional and the Project. The Professional further represents to the Owner that the Professional will maintain all necessary licenses, permits, or other authorizations necessary to act as Professional for the Project until the Professional's remaining duties hereunder have been satisfied. The Professional assumes full responsibility to the Owner for the negligent acts and omissions of the Professional's consultants or others employed or retained by the Professional in connection with the Project.

**1.1.3** During the performance of this Agreement, the Professional shall not discriminate against any employee, applicant for employment, any independent Contractor or any other person because of race, color, religious creed, ancestry, national origin, service in the uniformed services (as defined in state and federal law), veteran status, age, sex, sexual orientation, marital or family status, pregnancy, pregnancy-related conditions, physical or mental disability, gender, perceived gender, gender identity, genetic information or political ideas, or any other basis prohibited by law.

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

**1.1.5** The Professional shall provide the services required by this agreement in conformance with the most recent project schedule approved by the Owner.

**1.1.6** The Professional shall provide Professional Services, per Exhibit A and per this agreement, in accordance with The Pennsylvania State University Design and Construction Standards manual. Professional Services shall be in accordance with the Standards in effect at the date of execution of this Agreement, unless otherwise agreed to by the Owner in writing.

**1.1.7** The Professional is responsible for additional submission and presentation requirements as outlined for Board of Trustee approval or other administrative approval.

**1.1.8** If a Construction Manager is hired by the Owner it will be the responsibility of the Professional to collaborate and work in concert with the Construction Manager throughout the duration of the project. Furthermore, the Professional shall reconcile all cost estimates with the Construction Manager.

**1.1.9 Adherence to Time Schedule:** The Professional shall strictly adhere to submission schedules as set forth in this Agreement. Should the Professional become aware that he will be unable to meet any of the dates set forth in this Agreement, the Professional shall immediately notify the Owner in writing. The

Professional shall include in the notice the reason(s) for the Professional's inability to meet the date(s) and a request that the Owner amend the time schedule. The Owner shall review the Professional's notice and determine whether to amend the time schedule.

1.1.9.1 Costs Attributable to Delay: If the Owner determines that the delay is due to the fault of the Professional, the Owner may amend the schedule and direct the Professional to expeditiously proceed with the design of the project, in which case the Owner may hold the Professional responsible for any costs attributable to the delay, or terminate the Agreement for default of the Professional, in accordance with the provisions of this Agreement. If the Owner determines that the delay is not due to the fault of the Professional, the Owner may amend the schedule. The Professional agrees that such an amendment of the schedule is the exclusive remedy for a delay and that the Professional may not make any claims against the Owner for increased costs due to the delay.

1.1.10 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.

1.1.10.1 Penn State Office of Physical Plant design visualization requirements apply.

1.1.11 Contractor Design-Assist: The Owner anticipates utilizing contractor/vendor design-assist on some aspects of the project. If utilized, the Professional will assume the responsibility for incorporation of the design assist information into the overall design.

1.1.12 LEED Responsibility for Project: The Professional shall ensure that the LEED target certification level for the project is achieved. The Professional shall be primarily responsible for identifying the listing of credits to be achieved during the project in an effort to meet the certification level. The Professional shall also be responsible for preparing all documentation required for submission. The Professional shall use as a guide The Pennsylvania State University LEED Policy to be provided by the Owner.

1.1.13 Design Phase Requirements: The Professional shall review and comply with the most current version the Office of Physical Plant's Design Phase Deliverables document and with The Pennsylvania State University's manual of Design & Construction Standards. Both documents are available on the Office of Physical Plant web page.

The Professional shall actively participate in the Design Review process utilizing software of the Owner's choice. The Professional will provide all design review documents electronically in a .pdf or compatible format for each review. The Owner's comments on these documents will be provided via the design review software. The Professional is responsible for accessing, reviewing, and responding to those comments within the software. Comments and responses will be archived by the Owner for the record.

## 1.2 Schematic Phase

The Professional shall review and comply with the Project program and The Pennsylvania State University Design and Construction Standards, both as furnished by the Owner, and shall conduct appropriate visits to the Project site. The Professional shall then provide to Owner a preliminary evaluation of the program and schedule and a preliminary construction cost estimate that is consistent with the Owner's program, schedule, and budget. The Professional shall review with the Owner alternative approaches to project design and construction, as may be required.

After the Owner has approved the Project scope, cost estimate and schedule as submitted by the Professional, the Professional shall prepare and submit to the Owner, for approval, Schematic Design Documents and any other documents required by the Owner. Refer to the Design Phase Submittal Requirements document available on the Office of Physical Plant web page for a listing of submission requirements for the Schematic Phase.

Following approval of Schematic Design Documents and any other documents required at such phase by the Owner, The Professional shall submit a Construction Cost Estimate. The estimate shall be determined by the Professional using the most accurate means available.

### 1.3 Design Development Phase

After approval by the Owner of the Schematic Design Documents, and any Owner-authorized changes in Project scope or construction budget, the Professional shall prepare and submit, for approval by Owner and any government authorities, Design Development drawings and any other documents required by the Owner for said approval. These drawings and other documents shall fix building size, delineate and describe the various construction materials to be used, and indicate the structural, mechanical, and electrical systems upon which the design is based. Refer to the Design Phase Submittal Requirements document available on the Office of Physical Plant web page for a listing of submission requirements for the Design Development Phase (noted as Preliminary and Design Phase in the document).

The Professional shall provide an update of the Construction Cost Estimate and schedule and advise the Owner immediately of any adjustments.

### 1.4 Construction Document Phase

After approval by the Owner of the Design Development Phase documents, and any further Owner-authorized changes in Project scope or construction budget, the Professional shall prepare and submit to the Owner, for approval, Construction Drawings and Specifications/Project Manual (hereinafter referred to as the "Construction Documents") required by the Owner for said approval. These Construction Documents shall delineate, detail, and completely specify all materials and equipment required to fully complete construction of the Project in every respect, consistent with current standards of the profession. The Construction Documents shall completely describe all work necessary to bid and construct the Project. Refer to the Design Phase Submittal Requirements document dated August 2006 (or any subsequent updates), available on the Office of Physical Plant web page, for a listing of submission requirements for the Construction Document Phase.

Any review and approval by the Owner of the Construction Documents shall not be deemed to diminish the Professional's obligations under this Agreement.

The Professional shall provide an update of the Construction Cost Estimate and schedule and shall advise the Owner immediately of any adjustments.

The Professional shall be responsible for completing all of the appropriate planning modules, soil and erosion control plans, and other documents which may be required.

The Professional shall be responsible for obtaining, on behalf of the Owner, whatever approvals are necessary to connect to non-Owner-owned utility lines.

The Professional shall coordinate the Construction Documents for all of the Separate Prime Contracts or trade packages, as required, and shall employ all reasonable and necessary efforts to prevent omissions, conflicts, overlaps, or duplications of any items of work or materials on the Project.

The Professional shall coordinate the services of all design consultants for the Project, including those retained by the Owner.

### 1.5 Bidding Phase

After approval by the Owner of the Construction Documents, the Professional shall prepare and distribute all necessary bidding correspondence and documents, evaluate bid proposals, attend pre-bid or pre-award meetings, clarify the scope or intent of the Construction Documents, evaluate proposed subcontractors, and assist in the preparation of construction contracts. The Professional shall provide these services in support of the Owner's selected construction delivery method, which may include Job Order Contracting procurement.

## 1.6 Construction Phase

The Professional shall issue a set of construction documents that incorporate all bidding documents and revisions per addenda prior to the start of construction. The Professional's responsibility under this Agreement for Construction Phase services commences with the execution of the Contract(s) between the Contractor(s) and the Owner and terminates no earlier than the expiration of the Contractor's one-year guarantee period against defective materials, equipment, and/or workmanship. This paragraph is not intended to, and shall not be construed as, affecting in any way the calculation of any applicable legal statutes of limitation.

Administration, by the Professional, of the construction contract(s) shall be as outlined below and in accordance with the General Conditions of the Contract for Construction. The Professional agrees to perform all of its obligations under this Agreement consistent with said General Conditions. The extent of the Professional's duties and responsibilities and the limitations of its authority as specified thereunder shall not be modified without written agreement between the Owner and the Professional.

The Professional shall not be responsible for the Contractor's construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. However, if the Professional has actual knowledge of safety violations, the Professional shall immediately alert the relevant Contractor or Subcontractor and shall give prompt written notice to the Owner.

The Professional shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Professional shall not be deemed to have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons performing portions of the Work. However, the Professional shall provide all required assistance to the Contractor, Subcontractors and/or agents and employees in order to facilitate the appropriate and timely performance of the Work. Furthermore, Professional is responsible for notifying the Owner and the Contractor of the Contractor's failure to carry out the Work in accordance with the Contract Documents upon observing such failure by the Contractor.

1.6.1 Schedule of Values: Upon receipt, the Professional shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation or data which the Owner or the Professional may require from the Contractor. The purpose of such review and examination will be to protect the Owner from an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data or than is reasonable under the circumstances. If the Schedule of Values is found to be inappropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the Professional to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted or, if necessary, as revised, the Professional shall sign the Schedule of Values thereby indicating the Professional's informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. The Professional shall not sign such Schedule of Values in the absence of such belief unless directed to do so, in writing, by the Owner. The Professional shall provide the Owner with a signed copy of the Schedule of Values after approval.

1.6.2 Access to Work: The Professional and its authorized representatives shall have full and safe access to the work at all times.

1.6.3 Visits to the Site/Inspection: The Professional and any consultants retained by the Professional, or an authorized and qualified representative, shall visit the Project periodically as required by the Owner during periods of active construction in order to review the progress of the work, and take such actions as are necessary or appropriate to achieve the requirements of the Construction Documents in the work of the responsible Contractors, including advising the Owner's representatives as to particular matters of concern. It shall also be the duty of the Professional to have its Consultants visit the site periodically as required during their respective Phases of the work, at such intervals as may reasonably be deemed necessary by the Owner and the Professional, to review their respective Phases of the work in order to achieve the requirements of the Construction Documents.

The purpose of such site visits and reviews will be to determine the quality, quantity, and progress of the Work in comparison with the requirements of the Construction Documents. In making such reviews, the Professional shall exercise care to protect the Owner from defects or deficiencies in the Work, from unexcused delays in the schedule, and from overpayment to the Contractor. Following each such review, the Professional shall submit a written report within (5) calendar days of such review, together with any appropriate comments or recommendations, to the Owner.

Whenever, in the Professional's opinion, it is necessary or advisable, the Professional shall require special inspection or testing of the Work in accordance with the provisions of the Construction Documents whether or not such Work is fabricated, installed, or completed. The Professional shall advise the Owner of all such occurrences requiring special inspection or testing of the Work and shall obtain prior approval from Owner before any funds are committed for inspection, beyond what has already been budgeted.

1.6.4 Approval of Payment to Contractors: Based on the Professional's review of the Project, the Professional will recommend, within seven (7) calendar days after receipt, approval or rejection of payment on the Application-Certificate of Payment. Approval of the Certificate of Payment shall constitute a representation by the Professional to the Owner that the work has progressed to the point indicated on the Application, and that to the best of the Professional's knowledge, information, and belief, the quality of the work is in accordance with the Contract Documents.

The Professional shall make recommendations to the Owner for the withholding of any payment, or portion thereof, due to inadequate progress and/or performance of the Contract.

The Professional agrees that time is of the essence with respect to this provision.

1.6.5 Interpreter: The Professional will be, in the first instance, the interpreter of the requirements of the Contract Documents. The Professional will, within a reasonable time as determined by the Owner, render such interpretation as it may deem necessary for the proper execution or Progress of the Work. All interpretations by the Professional shall be defined in writing and/or by drawing and shall be consistent with the intent of the Contract Documents.

In addition to the above, the Professional shall be required to attend, at the determination of the Owner, any and all Project site conferences dealing with interpretation of the Contract Documents.

The Professional's decisions, with Owner's prior approval, shall in matters relating to aesthetic effect be final if consistent with the intent of the Construction Documents.

1.6.6 Review of Contractor's Shop Drawings and Materials: The Professional shall review, approve, and process, subject to the right of review by the Owner, Shop Drawings to ensure compliance with the Contract Documents and all product data, samples, materials, and other submissions of the Contractor required by the Contract Documents for conformity to and in harmony with the design concept of the Project and for compliance with the requirements of the Contract Documents. The Professional shall not approve any substitution of specified materials and/or equipment without first obtaining the Owner's consent. Approval by the Professional of the Contractor's submittal shall constitute the Professional's representation in accordance with Article 5 of the General Conditions of the Contract for Construction to the Owner that such submittal is in conformance with the Contract Documents.

When the Contractor is required by the Contract Documents to provide professional certification of performance characteristics of materials, systems, or equipment, the Professional shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet performance criteria required by the Contract Documents.

The Professional is responsible for providing a detailed submittal register. The submittal register should have separate submittal items for product data and Operations & Maintenance manuals. Based on the priorities of the construction schedule, the Prime Contractor(s) shall submit a shop drawing submittal schedule on or before the Second Regular Job Conference. The Professional shall review and check the shop drawing submittal schedule within fourteen (14) calendar days of receipt from the Contractor.



The Professional shall return the approved shop drawings, or detailed notation for resubmission, if required, within fourteen (14) calendar days after receipt from the Contractor unless mutually agreed otherwise by the Professional, Owner, and Contractor. The Professional shall act on any resubmissions within seven (7) calendar days of receipt thereof unless mutually agreed otherwise by the Professional, Owner, and Contractor. A detailed log shall be maintained by the Professional as to time of receipt of the shop drawings and time of return, with adequate notes as to their disposition.

Refer to 1.6.12 for electronic scanning and submission requirement of approved project shop drawings at the completion of the project.

The Professional is responsible to incorporate into the shop drawings comments by the Owner or Owner's authorized representative prior to the shop drawings being returned to the Contractor.

The Professional agrees that time is of the essence of this provision.

1.6.7 Job Conference Reports: The Professional shall take and retain a verbatim record of the biweekly Job Conference meetings and shall prepare and distribute summary minutes in a format approved by the Owner of each meeting within five (5) calendar days to the Owner, the Contractors, and all other interested parties.

1.6.8 Change Orders: The Professional shall review all Change Order requests within seven (7) calendar days and shall advise Owner, in writing, with respect to the necessity or advisability of same. The Professional shall also determine whether the cost is fair and reasonable for the additional work associated with the Change Order. In so doing, Professional shall provide all pertinent documents and data to the Owner, who shall make all decisions regarding approval or rejection of Change Order requests. The Professional shall maintain an appropriate Change Order log. The Professional may, after consultation with the Owner, authorize minor changes in the Work which do not involve an adjustment in the Contract sum or an extension of the Contract time and which are consistent with the intent of the Contract Documents.

1.6.9 Rejection of Work: The Professional is authorized and obligated to reject work which does not conform to the Contract Documents and shall immediately notify the Owner to stop a Contractor's work whenever, in the Professional's reasonable opinion, such action is necessary for the proper performance of the Construction Contract Work. The Professional shall not be liable to the Owner for the consequences of any recommendation made by the Professional in good faith, and in the exercise of due care in recommending to stop or not to stop the work.

1.6.10 Substantial Completion, Final, and One-Year Guarantee Inspections: The Professional and its consultants shall participate in Substantial Completion and Final Inspections to affix the dates of Substantial and Final Completion and shall concur in the report of Final Completion to the Owner prior to approving the Contractor's application for Final Payment. The Professional shall produce the punch list document and provide follow-up to ensure all items are completed to the satisfaction of the Owner. The Professional shall also acquire for Owner the Certificate of Occupancy.

The Professional and its consultants shall participate in an inspection prior to the expiration of the one (1) year guarantee period against defective materials, equipment, and/or workmanship to determine any defects in materials, equipment, and/or workmanship since the date of Substantial Completion. The Professional shall produce the (1) year guarantee period punch list document for distribution to the Contractor(s) and provide follow-up to ensure all items are completed to the satisfaction of the Owner.

1.6.11 Operations and Maintenance Data: At the time of Substantial Completion of the Project, the Professional shall review and approve all required close-out documentation required per the Specifications including, but not limited to, manufacturers' operating instructions, maintenance instructions, certificates, warranties, guaranties, and other pertinent operating and maintenance data.

The Professional shall electronically scan all reviewed and approved Operation and Maintenance data being returned to the Contractor and provide a complete set of Operation and Maintenance data for the

Project in electronic .pdf format (organized by building system) to the Owner within (1) month after receipt from the Contractor.

1.6.12 Record Drawings: At the time of Final Completion of the Project, the Professional shall collect from the Prime Contractor(s) their complete sets of as-built drawings and will, within 30 days after receipt from the Contractors, transpose all the changes recorded by the Contractors, onto a full set of reproducible drawings which shall become the record (as-built) drawings of the Project. The record drawings must also be put on electronic media compatible with the Owner's ACAD system. The Professional shall submit the as-built drawing set to the Owner in both ACAD dwg format and electronic pdf format (if project is utilizing Building Information Modeling an additional record drawing format shall be required and approved by the Owner).

The Professional shall electronically scan all approved shop drawings being returned to the Contractor and provide a complete set of the approved shop drawings for the Project in electronic pdf format (organized by CSI division) to the Owner within (1) month after Substantial Completion of the project.

1.6.13 Corrections: The Professional shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in its work product.

1.6.14 Errors and Omissions: If it becomes necessary during the course of construction to issue change orders which increase the cost of the Project because of the Professional's failure to produce proper and coordinated specifications and drawings, the Professional shall be assessed as follows:

1.6.14.1 Omission Change Order: A change order will be considered to be an omission change order when the additional work is necessitated by the Professional's omission of required elements or specifications in the Construction Documents, and where no work must be removed or replaced in order to carry out the change order. In such cases, the Professional shall be assessed in an amount equal to the difference between the amount of the change order and what the Owner would have paid had the omission not occurred, plus administrative costs incurred by the Owner.

1.6.14.2 Error Change Order. A change order will be considered to be an error change order when the additional work is necessitated by a failure of the Professional to conform to the applicable professional standard of care, resulting in an error which may be rectified only by removal and/or replacement of work which has been performed. In such cases, the Professional shall be assessed in an amount equal to the difference between the amount of the change order and what the Owner would have paid had the error not occurred.

At the completion of the project, the parties shall exercise good faith in seeking to amicably resolve any disputes that may exist regarding change orders. In the event that the parties are unable to reach an amicable resolution, the dispute resolution provision of Article 12.1 shall apply.

### 1.7 Electronic 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 secured repository for all projects.

The Professional 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 Professional and the Owner shall agree on file name convention of submissions in advance.

The Professional, 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 Professional 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 Professional and, as such, will not be reimbursed by the Owner.

The Professional shall obtain, at their own cost, the necessary equipment and web connections to access and utilize the PMIS. The Professional 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 Professional for claimed inefficiencies or other costs related to the implementation and subsequent use of the PMIS.

## **ARTICLE 2: ADDITIONAL RESPONSIBILITIES OF PROFESSIONAL**

### **2.1 Compliance**

The Professional is responsible for the compliance of the Construction Documents with all applicable permits, laws, regulations, and ordinances of all commissions, agencies and governments, federal, state and local, insofar as they are applicable to, and have jurisdiction over, the Project. The Professional shall make all required submittals with the advance knowledge of the Owner to, and shall obtain all required approvals from, the applicable agency in a timely manner so as not to cause delays to the Project. The Professional shall also attend all hearings/meetings required for securing necessary approvals and permits.

The Professional shall be responsible for producing a submission document set for approval by Labor and Industry as required by the Commonwealth of Pennsylvania to obtain the necessary building permit. The Professional shall also be responsible for additional submissions as required by the Labor and Industry Building permit processes and procedures throughout the project design and construction.

**2.1.1 Environmental Regulatory Compliance Checklist Tool:** The Professional will review and comply with the current versions of the *Environmental Regulatory Compliance Checklist* and *Environmental Regulatory Compliance Checklist Addendum*, to determine those materials and/or conditions which may require regulatory compliance for this project. The Checklist is available on the Office of Physical Plant web site

<https://wikispaces.psu.edu/dosearchsite.action?where=OPPDCS&spaceSearch=true&queryString=environmental+Regulatory>

### **2.2 Cooperation With Local Bodies**

During the design of the Project, the Professional shall keep informed and comply with the requirements of all local zoning, planning, and supervisory bodies. Should these requirements substantially increase the cost of the Project, or should any required approvals be withheld by the local bodies, the Professional shall immediately notify the Owner.

### **2.3 Proprietary Items, Copyrights, Patents, Royalties**

The Professional shall not include in the design of the Project, unless directed by the Owner, any equipment, material, or mode of construction which is proprietary or which contains a copyright or patent right relating to designs, plans, drawings, or specifications, unless the equipment, material, or mode of construction is different and fairly considered superior in quality and performance. If the Professional includes in the design of the Project any equipment, material, or mode of construction which is proprietary, it shall have prior approval by the Owner and it shall only be because the item is different and fairly considered superior in quality and performance, and not for the purpose of preventing or restricting competitive bidding.

The Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Professional and incorporated in the Work. The Professional shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Professional harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner.

Professional may not knowingly list as acceptable any item which cannot comply with the Steel Products Procurement Act.

The Professional's inclusion of proprietary specifications, other than those identified in Penn State's Design and Construction Standards, in any contract documents that are produced shall only be done so with approval of the Owner.

#### 2.4 COLUMBIA GAS HIGH PRESSURE GAS LINE (HPGL), UNIVERSITY PARK CAMPUS only

2.4.1 The Professional shall be aware of the HPGL at the University Park Campus. The route of the HPGL is depicted on the [Columbia Gas Line Routing Map](#), accessible on the Office of Physical Plant web site <http://opp.psu.edu/sub-division/construction-services>. The Professional shall advise Penn State immediately if the URL is not working.

2.4.2 The Professional is responsible to appropriately consider the HPGL in all designs and documentation prepared by the Professional or under the direction of the Professional.

2.4.3 Projects involving any temporary or permanent work within 300 feet of the HPGL shall be coordinated per the requirements and notes included on the map drawing referenced in 2.4.1 above.

### **ARTICLE 3: OPTIONAL ADDITIONAL SERVICES**

Unless required by the Project Scope, the services performed by the Professional, Professional's employees, and Professional's consultants as outlined in this Article are not included in Basic Services and shall be paid for by the Owner as provided in this Agreement in addition to the compensation for Basic Services.

None of these services shall be provided by the Professional, whether they are requested by the Owner or required due to circumstances unknown at the time of the execution of the Agreement, until approval in writing has been given by the Owner.

#### 3.1 Project Representation

If more extensive representation at the site by the Professional is required by the Owner than is provided for under Basic Services, Paragraph 1.6, Construction Phase, the Professional shall provide one or more Project representatives to assist in carrying out such additional on-site representation.

Additional Project representative(s) shall be selected, employed, and directed by the Professional with the approval of the Owner, and the Professional shall be compensated therefore as mutually agreed, in advance, between the Owner and the Professional. Such supplemental agreement letter shall also delineate the duties and responsibilities of the additional Project representative(s).

#### 3.2 Revisions to Approved Drawings and Specifications Prior to Construction Phase

3.2.1 Making revisions to the drawings and specifications requested by the Owner subsequent to the Owner's approval of the Construction Documents as outlined in Paragraph 1.4, Construction Document Phase, unless required to keep the estimated Construction Costs within the amount budgeted for same.

3.2.2 Making revisions to the drawings and specifications required by the enactment or revisions of codes, laws, or regulations subsequent to the completion of the Construction Documents as approved by the Owner.

3.3 Preplanning: Providing special analysis of the Owner's needs such as selection, planning, and development of the site; economic, demographic, and/or financial feasibility; preliminary design criteria and budget estimates; or other special studies except as herein provided as part of Basic Services.

3.4 Specialized Consultants: Providing unusual or specialized Consultant services other than those consistent with the inherent requirements of the Project scope and required to meet the functional needs of the Project.

3.5 Surveys: Providing a complete topographic survey and/or related aerial photography, ground control, photogrammetric plotting, property boundary survey, and the preparation of a metes and bounds legal description and a related plot.

3.6 Special Studies: Providing services related to the preparation of Environmental Assessments and/or Environmental Impact Statements, Energy Impact Statements, Analysis, or Feasibility Studies as may be required by local, state or federal government agencies, provided such services are in addition to the Project scope requirements.

3.7 Other Services: Providing services mutually agreed to that are not otherwise included in this Agreement.

#### **ARTICLE 4: INDEMNIFICATION**

4.1 To the fullest extent permitted by law, the Professional shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, trustees and employees (referred to in this subparagraph as "the Indemnitees") from and against any and all claims, losses, costs, expenses or damages, including reasonable attorneys' fees, for bodily injury, sickness, death or property damage (other than to the Work itself), that may arise as a result of the performance or failure to perform services and duties pursuant to this Agreement, but only to the extent caused by the negligent acts or omissions or failure to conform to the Contract Documents or Scope of Work, by the Professional or Professional's agents, employees consultants, subcontractors or anyone employed directly or indirectly by any of them, or by anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by an Indemnitee. The Professional shall not be required to indemnify or hold harmless the Indemnitees for any claims, losses, costs, expenses or damages caused solely by negligent acts or omissions of the Indemnitees.

4.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Professional, its agents, employees and consultants, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable (referred to in this subparagraph as "the Indemnitees"), from and against any and all claims, losses, costs, expenses or damages, including reasonable attorneys' fees, for bodily injury, sickness, death or property damage (other than to the Work itself), that may arise from actions or omissions by the Owner, but only to the extent caused by the negligent acts or omissions of the Owner regardless of whether or not such claim, damage, loss, or expense is caused in part by an Indemnitee. The Owner shall not be required to indemnify or hold harmless the Indemnitees for any claims, losses, costs, expenses or damages caused solely by negligent acts or omissions of the Indemnitees.

4.3 No Limitation on Liability: Professional's indemnification obligations under this Article shall not be capped or limited in any way by or to the extent of any limitation on the amount or type of damages, compensation, or benefits payable by or to be paid to the Professional pursuant to this Agreement, nor to the limits of any applicable insurance coverage, including but not limited to workers' compensation, disability or employee benefits coverage, professional liability, general liability, disability benefit acts or any other applicable employee benefit acts.

#### **ARTICLE 5: INSURANCE**

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

5.1.1 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

5.1.2 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.

5.1.3 Commercial General Liability 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 Professional 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 Professional 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.

5.1.4 Professional Liability Insurance: Where professional services are being provided by licensed and non-licensed professionals, the Professional 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 Professional. This coverage shall be continued in effect for 3 year(s) after the Date of Substantial Completion.

5.1.5 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 Professional 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.

5.1.6 The insurance limits required for the Employers' Liability, Business Automobile Liability and CGL coverage required under subsection 5.1 may be provided by a combination of primary and Excess or Umbrella Liability policies.

5.1.7 The Owner must be named on the Professional's Commercial General Liability insurance as an additional insured.

5.1.8 The Professional shall maintain in effect all insurance coverage required under subsection 5 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.

5.1.9 If the Professional fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Professional, or terminate this Agreement.

5.1.11 Insurance policies required under subsection 5.1 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.

5.1.12 Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Professional 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 5.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Professional shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

5.1.13 The Professional's insurance shall be primary and non-contributory to the University's insurance.

5.1.14 Failure of the Professional to procure, carry, and maintain the required insurance shall not relieve the Professional, and any Subcontractor thereof, of any obligation or liability assumed under this Agreement, nor of any obligation or liability imposed by law.

5.1.15 Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Professional.

## 5.2 PROPERTY INSURANCE

5.2.1 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 Professional, 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.

5.2.1.1 The Builder's Risk Insurance Policy has a deductible. If the Professional suffers a Builder's Risk loss covered by this insurance, the Professional 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 Professional's payment towards the deductible of a loss covered by this insurance will not exceed \$25,000 per occurrence.

5.2.2 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 Professional 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 Professional's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

5.2.2.1 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 Professional before the Work commences. The Professional 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.

5.2.3 Owner and Professional 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 Professional may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 5.2.1.

5.2.3.1 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 Professional until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

### 5.3 OWNER'S INSURANCE

5.3.1 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.

5.3.2 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 6: OWNER'S RESPONSIBILITIES**

### 6.1 Basic Information

The Owner shall provide the Professional all information available at the time regarding requirements for the Project. Such information shall include:

6.1.1 A Project Program setting forth the Owner's objectives, space requirements and relationships, special equipment, and systems and site requirements.

6.1.2 A Project Budget including the amount allocated for the Construction Cost and all other anticipated costs and expenses.

6.1.3 A Project Schedule setting forth the times allotted for the Design and Construction Phases of the Project.

If the information furnished is not sufficient for the process of initiation of design solutions, the Professional shall notify the Owner immediately.



## 6.2 Surveys

The Owner shall furnish to the Professional, as available, surveys describing (as applicable) grades and lines of streets, alleys and pavements; the location of all rights-of-way restrictions, easements, encroachments, zoning classification, boundaries and contours of the site; location, dimensions and other necessary data pertaining to any existing buildings, other improvements and trees; information concerning existing utilities throughout the site, including inverts and depth; and shall establish a Project benchmark.

## 6.3 Geotechnical Engineering Services

The Owner shall pay the costs of all geotechnical engineering services required for the Project and requested by the Professional and Owner. Such services shall include, but are not limited to, tests borings, samples, field and laboratory reports, final soil reports and logs, and foundation engineering evaluations and recommendations.

## 6.4 Miscellaneous Tests, Inspections, and Reports

The Owner shall furnish, at the Owner's expense, air and water pollution, hazardous material, environmental, and any other miscellaneous laboratory tests, inspections, and reports as may be required.

## 6.5 Approval or Disapproval of Design Work

Any approval or failure of the Owner to disapprove or reject design work submitted by the Professional shall not constitute an acceptance of the work such as to relieve the Professional of his full responsibility to the Owner for the proper and professional performance of all design work on the Project.

## 6.6 Owner Response

The Owner shall act with reasonable promptness on all submissions from the Professional, which require action by the Owner, in order to avoid unreasonable delay in the progression of the Project through the various Phases outlined in Article 1.

## 6.7 Notice of Nonconformance

The Owner shall notify the Professional immediately if the Owner becomes or is made aware of any fault or defect in the Project or nonconformance by any party with the Contract Documents.

## 6.8 Copies of Owner's Documents

The Owner shall supply the Professional with copies of the Owner's Form of Agreement between Owner and Contractor and General Conditions of the Contract for Construction for inclusion, by the Professional, in the Bidding Documents. It shall be the Professional's responsibility to access, review, and implement The Pennsylvania State University Design and Construction Standards, as set forth in the university's manual of Design and Construction Standards.

## 6.9 Preconstruction Services

The Owner intends to independently retain a Construction Management firm to provide preconstruction and construction services. The Professional will assist the Owner in reviewing proposals and allow for two full days of meetings to interview and rank prospective construction management firms.

# **ARTICLE 7: CONSTRUCTION COST**

## 7.1 Project Cost Determination

The Construction Cost for all work described in the Construction Documents, as approved by the Owner shall be determined as outlined below, with precedence in the order listed:

- 7.1.1 For completed construction, the total cost to the Owner for such construction work less the amount of any change order work necessary because of errors or omissions on the part of the Professional as defined in Subparagraph 1.6.14, Errors and Omissions.
- 7.1.2 If the Project is not constructed, the sum of the lowest bona fide bids(s) received for all of the work, providing said bids do not exceed the Construction Cost Allocation as defined in Paragraph

10.2 or as amended by written agreement by the Owner and Professional as the basis for design. If such bids exceed the limitation previously agreed upon, said limitation shall become the basis of cost.

7.1.3 If bids are not received, the latest Construction Cost Estimate prepared by the Professional, provided such estimate does not exceed the Construction Cost Allocation as defined in Paragraph 10.2 or as amended by written agreement by the Owner and Professional as the basis for design.

## 7.2 Notification

It shall be the Professional's responsibility to promptly notify the Owner if, in the Professional's opinion, the Project cannot be designed and constructed within the Construction Cost Allocation as authorized by the Owner. It is the Professional's responsibility to so notify the Owner as soon as such a situation becomes, or should have become, apparent to the Professional.

## 7.3 Owner Options

If, without written acknowledgment by the Owner, the Professional permits the Construction Contracts to be bid, and if the Construction Cost Allocation is exceeded by the lowest bona fide bid(s) or negotiated proposal, the Owner may: (1) give written approval of an increase in such fixed limit; (2) authorize rebidding or renegotiating of the Project; (3) terminate the Project and this Agreement in accordance herewith; or (4) cooperate in revising the Project scope or quality, or both, as required to reduce the construction cost. In the case of (4), the Professional, without additional charge to the Owner, shall consult with the Owner and shall revise and modify the Construction Documents as necessary to achieve compliance with the Construction Cost Allocation. Absent negligence on the part of the Professional in making its estimates of probable construction cost, such modifications and revisions shall be the limit of the Professional's responsibility arising from the establishment of such Construction Cost Allocation, and having done so, the Professional shall be entitled to compensation for all other services performed, in accordance with this Agreement.

If, after notification to the Owner by the Professional that the Project cannot be designed and constructed within the Construction Cost Allocation, the Professional is by written authorization by the Owner instructed to proceed without a change in the Project program, design, or in the Construction Cost Allocation, the Professional shall not be responsible for the cost of any subsequent redesign.

## **ARTICLE 8: OWNERSHIP AND USE OF DOCUMENTS**

All preliminary studies, Construction Documents, as-built documents, record drawings, special requirements, cost estimates, building information models and all other data compiled by the Professional under this Agreement shall become the property of the Owner and may be used for any purpose desired by the Owner except to use for the construction of an identical facility not covered by this Agreement. The Professional shall not be liable for any reuse of these documents by the Owner.

## **ARTICLE 9: PROFESSIONAL'S EXPENSES**

### 9.1 Billable Hourly Rates

9.1.1 Direct personnel expense is defined as the direct salaries of the principals, associates, and employees of the firm who are assigned to and are productively engaged on the Project, including clerical employees.

9.1.2 Billable hourly rates for this project are included in the personnel listing in Exhibit B. Billable hourly rates shall be the direct personnel expense rate for any principal's time and a multiple of a maximum of (2.5) the direct personnel expense per hour for the Professional's employees which shall include mandatory and customary benefits such as employment taxes, statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

9.1.3 The billable hourly rates set forth in Exhibit B may be adjusted annually, subject to the Owner's approval, in accordance with generally accepted salary review practices of the profession. Payroll certification shall be provided by the Professional to the Owner upon demand.

## 9.2 Reimbursable Expenses

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

9.2.2 Reimbursable expenses shall be submitted with supporting documentation, which shall include detailed, itemized receipts.

9.2.3 Reimbursable expenses for individual travel, meals, and lodging are limited to individuals under the direct employ of the Professional or their approved consultants.

9.2.4 Air travel expenses for the Professional or those under direct employ of the Professional shall be approved in advance by the Owner.

9.2.5 Professional 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:

9.2.5.1 Lodging: Professional will be reimbursed on an actual expense basis. Receipts will be required. The Professional 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, URL <http://www.gsa.gov/portal/content/104877> The Professional is encouraged to use the Owner's hotels when feasible.

9.2.5.2 Per Diem for Meals and Incidentals: Meal expenses will be reimbursed via the University meal per diem rates, URL <http://www.gsa.gov/portal/content/104877> Reimbursement will be reduced for meals provided by PSU. Alcohol is not reimbursable.

9.2.5.3 Use of Vehicles is reimbursable at the current transportation reimbursable rate, URL <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates>

9.2.5.4 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 Professional's own use or review shall not be included.

9.2.5.5 Expense of renderings, models, mock-ups requested by the Owner, and/or discs for electronic format submissions of record drawings.

9.2.5.6 Long-distance communications, and any necessary fee or permit payment required and paid to any governing body or authority having jurisdiction over the Project.

9.2.5.7 Out-of-town and out-of-state travel expenses and any necessary fee or permit payment required and paid to any governing body or authority having jurisdiction over then project.

9.2.5.8 Expenses of specialized consultants identified as Optional Additional Services in Article 3 of this Agreement.

### 9.3 Cost for Consultants

Cost for consultants shall be included as part of the Professional's Basic Fee for Service. For consultant services procured after award, the Professional shall be reimbursed on a multiple of up to one and one-tenth (1.1) times the amounts billed to the Professional. No mark-up shall be permitted on reimbursable expenses of the consultant, regardless of when procured.

## **ARTICLE 10: COMPENSATION AND PAYMENT**

### 10.1 Compensation and Payment

10.1.1 The Owner agrees to pay the Professional as compensation for those Basic Services described in Article 1, Article 2, and any other agreed upon services described in Article 3:

**(Option #1)** \_\_\_% of the authorized and approved Construction Cost as defined in Article 6.

**(Option #2)** an amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the Professional's Personnel Expense as defined in Paragraph 9.1 and cost for Consultants.

**(Option #3)** a fixed sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

10.1.2 Payment for Basic Services will be made monthly by the Owner in proportion to the service actually performed, but not to exceed the following percentages at the completion of each Phase.

Schematic Phase	15%
Design Development Phase	20%
Construction Document Phase	35%
Bidding Phase	5%
Construction Phase/Close-Out	25%

The close-out portion of the project refers to the development of the punch list and required follow-up, the submission of the as-built documents and other close-out document requirements, ongoing commissioning support, ongoing support of design-related project issues, and the performance of the (1) year bond inspection and punch-list development.

### 10.1.3 Reimbursable Expenses

The Owner agrees to pay the Professional as compensation for the Professional's Reimbursable Expenses, as defined in Paragraph 9.2, an amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

### 10.2 Construction Cost Allocation

The construction cost allocation for this project is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). It is a condition of the Agreement that the Professional design this project within the Allocation, unless that Allocation is changed in accordance with the terms and conditions of this Agreement.

### 10.3 Optional Additional Services Compensation

If approved, the Owner agrees to compensate the Professional for Optional Additional Services beyond Basic Services, as defined in Article 3 in accordance with the rates defined in Exhibit B and as approved by the Owner.

### 10.4 Payment Procedures

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

10.4.2 Submission of the Professional's invoice for final payment and reimbursement shall further constitute the Professional's representation to the Owner that, upon receipt from the Owner of the amount

invoiced, all obligations of the Professional to others, including its consultants, incurred in connection with the Project will be paid in full.

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

#### 10.5 Owner's Right to Withhold Payment

In the event that the Owner becomes credibly informed that any representation of the Professional provided pursuant to Articles 8 or 9 is wholly or partially inaccurate, the Owner may withhold payment of sums then or in the future otherwise due to the Professional until the inaccuracy, and the cause thereof, is corrected to the Owner's reasonable satisfaction.

### **ARTICLE 11: TERMINATION, ABANDONMENT, SUSPENSION, REACTIVATION**

#### 11.1 Termination by Owner

The Owner shall have the right at any time, for any reason, to terminate this Agreement upon not less than seven (7) calendar days' written notice to the Professional. The Professional shall comply with all reasonable instructions of the Owner then or subsequently given relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the Owner; discontinuance of the work on outstanding contracts; and furnishing to the Owner information concerning all action to be taken respecting outstanding agreements with consultants, contracts, awards, orders, or other matters.

Copies of Construction Documents and any other materials in existence as of the date of termination will be furnished to the Owner as requested.

#### 11.2 Compensation in the Event of Termination

In the event of termination, the Professional shall be compensated for its services and reimbursable to the termination date based upon services performed on any Phase to the termination date in accordance with the Compensation and Payment schedule contained herein at Article 10.1. Such compensation shall be the Professional's sole and exclusive remedy for termination.

#### 11.3 Suspension of Work

The Owner may, at any time, direct the Professional 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 Professional 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 Phase in which it then is. The Professional shall be compensated as if the Agreement had been terminated at the completion of the agreed Phase. If work is suspended during the Construction Phase, compensation shall be paid for all Professional services provided to the date of suspension, but no additional compensation shall be paid during the period of suspension.

#### 11.4 Reactivation Compensation

When a Project has been suspended or terminated for a longer time than six (6) months and is subsequently reactivated using the same Professional, the Owner and the Professional shall agree, prior to the beginning of the reactivation work, upon a lump sum, or other basis, of reimbursement to the Professional for its extra start-up costs occasioned as a result of the work having been suspended or terminated.

### **ARTICLE 12: MISCELLANEOUS PROVISIONS**

### 12.1 Dispute Resolution / Applicable Law

After Final Completion of the Project, any and all claims, disputes or controversies arising under, out of, or in connection with this Agreement, which the parties shall be unable to resolve within sixty (60) days of the time when the issue is first raised with the other party, shall be mediated in good faith. The party raising such dispute shall promptly advise the other party of such claim, dispute or controversy, in writing, describing in reasonable detail the nature of such dispute. By not later than five (5) business days after the recipient has received such notice of dispute, each party shall have selected for itself a representative who shall have the authority to bind such party, and shall additionally have advised the other party in writing of the name and title of such representative. By not later than ten (10) business days after the date of such notice of dispute, the parties shall mutually select a Pennsylvania-based mediator, and such representatives shall schedule a date for mediation, not to exceed one (1) day in length, and less where applicable. The mediation session shall take place on the University Park Campus of The Pennsylvania State University, or upon the campus where the Work was performed, at the option of the Owner. The parties shall enter into good faith mediation and shall share the costs equally.

If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after such mediation hearing, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in the Court of Common Pleas of Centre County, Pennsylvania, jurisdiction to which the parties to this Agreement hereby irrevocably consent and submit. Notwithstanding the foregoing, nothing in this clause shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

In all respects, this Agreement shall be interpreted and construed in accordance with the internal laws (and not the law of conflicts) of the Commonwealth of Pennsylvania.

### 12.2 Successors and Assigns

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

### 12.3 Assignment

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

### 12.4 Extent of Agreement

This Agreement, including any and all schedules, proposals and/or terms and conditions attached hereto, represent the entire and integrated agreement between the Owner and the Professional and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Professional. In the event of a conflict between the provisions of this Agreement and those of any other document, including any that are attached hereto, the provisions of this Agreement shall prevail.

### 12.5 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 either the Owner or the Professional.

### 12.6 Hazardous Material

Unless otherwise provided in this Agreement, the Professional and its consultants shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic material.

If the Professional encounters or suspects hazardous or toxic material, the Professional shall advise the Owner immediately.

### 12.7 Promotional Material

The Professional shall not issue or disclose to third parties any information relating to the Project without prior consent of the Owner, except to the extent necessary to coordinate the Work with the Owner's agent, Contractors, Subcontractors, etc. The Professional may, with written consent of the Owner,

include design representation of the Project, including interior and exterior photographs, among the Professional's promotional and professional materials.

#### 12.8 Terms/General Conditions

Terms contained in this Agreement and which are not defined herein shall have the same meaning as those in the Owner's Form of Agreement between Owner and Contractor and the Owner's General Conditions of the Contract for Construction, current as of the date of this Agreement.

#### 12.9 Social Responsibility and Professional Conduct

12.9.1 Fulfilling the mission of The Pennsylvania State University for those we serve requires the highest standards of integrity, responsibility, and respect. We encourage the Professional 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](http://purchasing.psu.edu/the-global-sullivan-principles-social-responsibility) <http://purchasing.psu.edu/the-global-sullivan-principles-social-responsibility> We also encourage the Professional to adopt and follow these principles.

12.9.2 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.

#### 12.10 Conflict of Interest

The Professional warrants that to the best of the Professional's knowledge there exists no actual or potential conflict between the Professional's family, business or financial interest or its services under this Agreement, and in the event of change in either its private interests or services under the Agreement. The Professional will raise with the Owner any question regarding possible conflict of interest which may arise as a result of such change.

#### 12.11 Background Check Policy

The Professional 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>

#### 12.12 Amendments

If any amendment to this Agreement includes additional Design Services, such additional Design Services shall be in accordance with The Pennsylvania State University Design and Construction Standards that are current as of the date of execution of the Amendment, unless otherwise agreed to by the Owner in writing. The Pennsylvania State University Design and Construction Standards can be found within the Office of Physical Plant web page <http://opp.psu.edu>

#### 12.13 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.

#### 12.14 Unmanned Aerial Systems (UAS), Unmanned Aircraft (UA)/Drone

If the nature of the Work involves the use of Unmanned Aerial Systems (UAS), Unmanned Aircraft (UA)/Drone, the Professional and those Subconsultants involved in such work must follow all federal regulations and Penn State policy SY45 <https://policy.psu.edu/policies/sy45> governing the use of unmanned aircraft operations on property owned or controlled by The Pennsylvania State University ("Penn State" or "University"), or elsewhere for University-Affiliated Activities. . Once this understanding is established, a Request to Fly must be submitted ( <https://www.research.psu.edu/UasOperations>). UA flight operations may not proceed until approval is granted by the Unmanned Aircraft (UA) Operations Manager at Penn State.

### **ARTICLE 13: SCHEDULE OF EXHIBITS**

The attached Exhibits are part of this agreement:

Exhibit A: Professional's proposal dated \_\_\_\_\_. (Professional's proposal, or some portion thereof, is attached hereto for the sole purpose of describing the scope of work that is to be completed pursuant to this Agreement. The parties agree that any additional terms or conditions that may appear within the attached proposal, or portion thereof, shall not bind the parties, shall not become a part of this Agreement, and shall not be incorporated within this Agreement).

Exhibit B: Professional's Billable Hourly Rates.

Exhibit C: Project Schedule

SAMPLE

This Agreement entered into as of the day and year written above.



**THE PENNSYLVANIA STATE UNIVERSITY  
OWNER**

\_\_\_\_\_  
Signature / Title

\_\_\_\_\_  
ATTEST, Secretary

\_\_\_\_\_  
Date

**PROFESSIONAL COMPANY NAME**  
PROFESSIONAL

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
ATTEST / WITNESS

\_\_\_\_\_  
NAME (print name of person signing above)

\_\_\_\_\_  
NAME (print name of Attest/Witness signing above)

\_\_\_\_\_  
TITLE (print title of person signing above)

\_\_\_\_\_  
TITLE (print title of Attest/Witness signing above)

Federal ID Number: \_\_\_\_\_

Attachments

SAMPLE