

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.

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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.

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 non-profit corporation created and existing under the laws of the Commonwealth of Pennsylvania, and an instrumentality of the Commonwealth of Pennsylvania; this term shall include the Owner and/or the Owner's authorized representative.

The **Pennsylvania State University Design and Construction Standards** means those design and construction standards as set forth at: http://www.opp.psu.edu/planning-construction/design_and_construction_standards/standards-and-forms.

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 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 this Contract 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 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.

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

1.1.5 The Professional shall provide Professional Services, per Exhibit A and per this agreement, in accordance with The Pennsylvania State University Design and Construction Standards referenced in Exhibit C.

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

1.1.7 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.

1.1.8 (OPTIONAL) Payment of the Professional's fees, as per in Article 9, is contingent upon completion of the documents per the attached schedule. (Attach Schedule as Exhibit D, if Schedule has been developed.)

1.1.9 (OPTIONAL) 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 or not to amend the time schedule.

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 time schedule. The Professional agrees that such an amendment of the time schedule is his exclusive remedy for a delay and that he may not make any claims against the Owner for increased costs due to the delay.

1.1.10 Building Information Modeling (BIM). The project will be designed, constructed, and operated using Building Information Modeling (BIM). The BIM project scope is defined in The Pennsylvania State University Office of Physical Plant BIM Contract Addendum (BIM Addendum). This addendum applies to all projects exceeding a Total Project Cost of \$5 Million new construction, substantial renovation, or as directed by the Office of Physical Plant Project Manager. On qualifying projects, professionals shall use BIM application(s) and software to develop project designs and assist in the coordination of construction.

The Pennsylvania State University is committed to utilizing BIM technologies and processes to execute the design, construction, and operations of its new High Performance buildings and the updating of all existing structures and infrastructure. The intent is to achieve the following goals: facilitate a collaborative project environment between all project stakeholders beginning at project conception through facility operations; improve facility system coordination to streamline design and construction processes and minimize change orders; deliver a better overall facility design, visualize construction processes, avoid field conflicts, develop building life cycle costs, accurately project cost estimates, and seamlessly transition into facilities operations; develop high performance buildings in accordance to The Pennsylvania State University sustainability goals; incorporate the Record Model and As-Built Models, including infrastructure and building systems, into the existing Enterprise Asset Management system (EAM) to create an As-Maintained Facilities Management Model; and establish a technology platform and provide continuous support to incorporate future technologies into existing processes.

The Professional shall provide all deliverables in compliance with the BIM Addendum at stages described in the BIM Plan. The BIM Model is an instrument of service and is considered to be a component of Design and Construction Documents governed by Article 7 of this Agreement and within the BIM Addendum, without exception.

The Professional shall lead the development of a project specific BIM Execution Plan (BIM Plan), documenting the collaborative process in which BIM will be implemented throughout the life cycle of the project, during the design phase. An initial BIM Plan shall include the Professional's requirements identified in the BIM Addendum and the Office of Physical Plant Plan Template. It shall be submitted for approval by The Pennsylvania State University prior to the contract execution. A collaborative BIM Plan shall be developed with the Contractor/CM prior to completion of the schematic design phase. In the event that a Contractor is not procured for preconstruction services, the Professional Team and Owner shall develop the collaborative BIM Plan. The BIM Plan shall be revisited with the entire project team prior to Construction and submitted to the Office of Physical Plant for final approval. Payment may be held at each development phase until the BIM Plan is approved.

All costs associated with BIM, including model updates during construction, shall be included in the base contract price (contract Article 9.1.1). A breakdown of any cost associated with the implementation of BIM must be disclosed in the BIM Addendum.

Any questions or variations from this language shall be submitted in writing and agreed upon with the Office of Physical Plant BIM Manager or Manager of Design Services.

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 (OPTIONAL, If there is a cost impact for not meeting the LEED certification level, it should be outlined as a penalty in this section.) 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.

1.2 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. 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.

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.

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.

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.

2.2 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

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

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](http://legacy.opp.psu.edu/planning-construction/design_and_construction_standards/documents/job-kit-construction-services/columbia-gas-line-routing-map/view)", accessible at URL: http://legacy.opp.psu.edu/planning-construction/design_and_construction_standards/documents/job-kit-construction-services/columbia-gas-line-routing-map/view

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.

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

To the fullest extent permitted by law, The Professional shall indemnify and hold harmless the Owner and the Owner's respective officers, directors, agents, servants, and employees from and against any and all liability, claims, losses, costs, expenses or damages, including reasonable attorneys' fees, costs and expenses, for property damage, bodily injury or death, that may arise as a result of the failure of the Professional or Professional's agents, employees or consultants, to comply with the applicable professional standards of care in rendering services in connection with this Agreement. Nothing in this indemnity section shall be construed to limit the insurance obligations agreed to herein.

ARTICLE 5: OWNER'S RESPONSIBILITIES

5.1 Basic Information

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

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

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

5.1.3 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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.

5.8 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 information provided by the Owner on the Office of Physical Plant web page. Refer to web page content listing in Exhibit C.

5.9 (OPTIONAL) 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 6: CONSTRUCTION COST

6.1 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:

6.1.1 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.

6.1.2 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 fixed limitation of Construction as defined in Paragraph 9.1.4 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.

6.1.3 If bids are not received, the latest Construction Cost Estimate prepared by the Professional, provided such estimate does not exceed the fixed limitation of construction as defined in Paragraph 9.1.4 or as amended by written agreement by the Owner and Professional as the basis for design.

6.2 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 fixed limitation on the cost of construction 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.

6.3 Owner Options

If, without written acknowledgment by the Owner, the Professional permits the Construction Contracts to be bid, and if the fixed limitation on the cost of Construction 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 fixed limitation on construction cost. 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 fixed limitation of construction costs, 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 fixed limitation on the cost of construction, the Professional is by written authorization by the Owner instructed to proceed without a change in the Project program, design, or in the fixed limitation on the cost of construction, the Professional shall not be responsible for the cost of any subsequent redesign.

ARTICLE 7: 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 8: PROFESSIONAL'S EXPENSES

8.1 Billable Hourly Rates

8.1.1 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.

8.1.2 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.

8.1.3 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.

8.2 Reimbursable Expenses

Reimbursable expenses are in addition to compensation for Basic and Additional Services and include those expenses as follows for which the Professional shall be reimbursed a not-to-exceed amount for his direct "out-of-pocket" costs (no mark-up allowed on reimbursable expenses). Reimbursable expenses shall be submitted with supporting documentation, which shall include detailed, itemized receipts. Where requested or authorized by the Owner, the following shall be reimbursable:

8.2.1 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 the Project. Air travel expenses shall be approved in advance by the Owner. Maximum individual per diem expenses for travel to the job site shall be based on the Owner's allowable per diem for lodging and meals for that location.

8.2.2 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.

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

8.2.4 Expenses of specialized consultants identified as optional additional services in Article 3 of this Agreement.

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

8.3 Cost for Consultants (consultants not included in the Basic Services proposal/procured after award)

The Professional shall be reimbursed on a multiple of one and one-tenth (1.1) times the amounts billed to the Professional for such services.

ARTICLE 9: COMPENSATION AND PAYMENT

9.1 Compensation and Payment

9.1.1 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: (Insert information in appropriate option below.)

(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 8.1 and cost for Consultants.

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

9.1.2 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.

9.1.3 Reimbursable Expenses

The Owner agrees to pay the Professional as compensation for the Professional's Reimbursable Expenses, as defined in Paragraph 8.2, an amount not to exceed _____ Dollars (\$_____).

9.1.4 The fixed limitation on the cost of construction as defined by this Agreement shall be _____ Dollars (\$_____).

9.2 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.

9.3 Payment Procedures

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

9.3.2 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.

9.3.3 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.

9.4 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 10: INSURANCE

10.1 Professional Liability Insurance

The Professional shall secure and maintain, at its sole cost and expense, Professional Liability Insurance to protect against loss resulting from design errors and omissions, failure to coordinate the Construction Documents of the Project, and failure to execute the construction administration duties for the Project.

10.1.1 Unless otherwise specifically provided in this Agreement, the Professional shall secure and maintain Professional Liability Insurance with limits not less than \$1,000,000, or the total of the Professional's fee, whichever is greater.

10.1.2 The Professional shall secure and maintain Professional Liability Insurance, as required above, up to and including one year after the date of the (1) year guarantee inspection of the contracts under the Project.

10.2 General Liability Insurance

The Professional shall secure and maintain, at its sole cost and expense, adequate General Liability Insurance to protect the Owner and the Owner's respective officers, agents, servants, and employees

against claims arising out of the Professional's services during the design and construction of the Project for damages in law or equity for property damage and bodily injury, including wrongful death. The Owner shall be named as an additional insured in the policy, and the Professional shall submit a Certificate of Insurance to the Owner prior to execution of the Agreement. The limits of coverage shall be not less than \$1,000,000. The Professional is required to secure and maintain General Liability Insurance, up to and including one year after the date of the (1) year guarantee inspection of the contracts under the Project.

10.3 Certificate of Insurance

The Professional shall furnish to the Owner annually, unless otherwise requested, during the active terms of this Agreement, a Certificate from an Insurance Carrier authorized to do business in Pennsylvania indicating: (1) the existence of the insurance required under this Article; (2) the amount of the deductible; and (3) the amount of coverage of such insurance. The Professional shall submit a Certificate of Insurance covering the Professional Liability Insurance requirement up to and including one year after the date of the (1) year guarantee inspection of the contracts under the Project.

10.4 Failure to Comply with Insurance Requirements

During any period in which the Professional is not in compliance with the terms of this Article, no compensation shall be paid by the Owner to the Professional.

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 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 9.1.2.

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 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>).

12.10 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 (www.opp.psu.edu).

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: The Pennsylvania State University Design and Construction Standards listing (screen print from the Office of Physical Plant web page).

(OPTIONAL) Exhibit D: Project Schedule (including design submission dates)

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

THE PENNSYLVANIA STATE UNIVERSITY
OWNER

Title

ATTEST, Secretary

Date

(PROFESSIONAL COMPANY NAME)
PROFESSIONAL

Signature

ATTEST, Secretary

Name: _____
(print name of person signing above)

Title: _____
(print title of person signing above)

Federal ID Number: _____

Attachments

