

FORM OF AGREEMENT 1-S

THE PENNSYLVANIA STATE UNIVERSITY

OWNER AND PROFESSIONAL

CONTRACT

THIS AGREEMENT made this _____ day of _____

in the year Two Thousand _____ by and between

hereinafter called the Professional and THE PENNSYLVANIA STATE UNIVERSITY, a state-related institution and instrumentality of the Commonwealth of Pennsylvania subject to Pennsylvania nonprofit corporation laws, hereinafter called the Owner 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 as follows:

ARTICLE 1: PROFESSIONAL'S RESPONSIBILITIES

The Professional's services consist of those services performed by the Professional, Professional's employees, and Professional's consultants included in Article 9.

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

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.

By executing this Agreement, the Professional represents to the Owner that the Professional is professionally qualified to act as the Professional for the Project and 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.

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.

BASIC SERVICES: The Professional's Basic Services consist of those included in Article 9.

ARTICLE 2: OWNER'S RESPONSIBILITIES

2.1 BASIC INFORMATION

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

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

2.2 SURVEYS

The Owner shall furnish to the Professional all 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; and information concerning existing utilities throughout the site. This information is issued for informational purposes only.

2.3 OWNER RESPONSE

The Owner shall act with reasonable promptness on all submissions from the Professional that require action by the Owner in order to avoid unreasonable delay in the progression of the project.

ARTICLE 3: TERMINATION, ABANDONMENT, SUSPENSION, REACTIVATION

3.1 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) 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.

3.2 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.

Such compensation shall be the Professional's sole and exclusive remedy for termination.

3.3 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 design Phase in which it then is. The Professional shall be compensated as if the Agreement had been terminated as at the completion of the agreed design Phase.

3.4 REACTIVATION COMPENSATION

Where 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's having been suspended or terminated.

ARTICLE 4: MISCELLANEOUS PROVISIONS

4.1 APPLICABLE LAW

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

4.2 SUCCESSORS AND ASSIGNS

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

4.3 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.

4.4 EXTENT OF AGREEMENT

This Agreement represents 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.

4.5 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.

4.6 PROMOTIONAL MATERIAL

With prior consent of the Owner, the Professional shall have the right to include design representation of the Project among the Professional's promotional and professional materials.

The Professional shall not issue or disclose any information relating to the Project without prior consent of the Owner.

4.7 OWNERSHIP AND USE OF DOCUMENTS

All preliminary studies, Construction Documents, special requirements, cost estimates, 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. The Professional shall not be liable for any reuse of these documents by the Owner.

4.8 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>)

4.9 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).

4.10 SOCIAL RESPONSIBILITY AND PROFESSIONAL CONDUCT

4.10.1 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](#). We also encourage the Professional to adopt and follow these principles.

4.10.2 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, is subject to corrective action.

4.11 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 PSU any question regarding possible conflict of interest which may arise as a result of such change.

4.12 PROPRIETARY ITEMS

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.

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

4.13.1 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 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.

4.13.2 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.

4.13.3 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 4.13.1.

ARTICLE 5: INDEMNITY

5.1 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 (the Indemnitees) from all claims for bodily injury, sickness, or death and property damage (other than to the Work itself), including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions or failure to conform to the provisions of the Scope of Work defined in the Request for Proposal and of this Agreement, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Professional shall not be required to indemnify or hold harmless the Indemnitees for any negligent acts or omissions of the Indemnitees.

5.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Professional, its officers, directors or members, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury, sickness or death and property damage (other than to the Work itself), including reasonable attorneys' fees, costs and expenses,

that may arise from the performance of work by the Owner or Others, but only to the extent caused by the negligent acts or omissions of the Owner or Others.

5.3 NO LIMITATION ON LIABILITY

In any and all claims against the Indemnitees by any employee of the Professional, anyone directly or indirectly employed by the Professional or anyone for whose acts the Professional may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Professional under workers' compensation acts, disability benefit acts or other employee benefit acts.

5.4 ROYALTIES, PATENTS AND COPYRIGHTS

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.

ARTICLE 6: INSURANCE

6.1 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:

6.1.1 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

6.1.2 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.

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

FOR PROJECTS UNDER \$1,000,000

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

The 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.

6.1.4 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.

6.1.5 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.

6.1.6 The insurance limits required for the Employers' Liability, Business Automobile Liability and CGL coverage required under subsection 6.1 may be provided by a combination of primary and Excess or Umbrella Liability policies.

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

6.1.8 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.

6.1.9 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.

6.1.10 Insurance policies required under subsection 6.1 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 cancellation of coverage by the insurance company.

6.1.11 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 6.1 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.

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

6.1.13 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.

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

6.2 PROPERTY INSURANCE

6.2.1 BUILDER'S RISK POLICY: Before commencing the Work, the Owner shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. 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 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. The Owner shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Professional, Subcontractors, Subsubcontractors, Subconsultants, Material Suppliers and Design-Professional. 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 coverage required in this subsection. Before commencing the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.

6.2.1.1 The Builder's Risk property insurance has a deductible. 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 will not exceed \$25,000 per occurrence.

6.2.2 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.

6.2.2.1 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.

6.2.3 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.

6.2.3.1 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.

6.3 OWNER'S INSURANCE

6.3.1 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.

6.3.2 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 7: PROFESSIONAL'S EXPENSES

7.1 DIRECT PERSONNEL EXPENSE

7.1.1 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. Direct personnel expense per hour for the Professional's employees shall include mandatory and customary burden such as employment taxes, statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

7.1.2 Billable Rate Schedule: The Professional's proposal shall include a complete Billable Rate Schedule. A billable rate is defined as the full value of a labor-hour including all Direct Personnel Expense, overhead, burden, and profit.

7.2 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 shall be permitted on reimbursable expenses.

- 7.2.1 Provider will be reimbursed for allowable travel expenses submitted in accordance with [PSU's Travel Policies and Procedures](http://travel.psu.edu/policies), URL <http://travel.psu.edu/policies>
- 7.2.2 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](http://www.gsa.gov/portal/content/104877). URL <http://www.gsa.gov/portal/content/104877> The Professional is encouraged to use the Owner's hotels when feasible.
- 7.2.3 Per Diem for Meals and Incidentals: Meal expenses will be reimbursed via the [University meal per diem rates](http://abs.psu.edu/travelrates/), URL <http://abs.psu.edu/travelrates/> Reimbursement will be reduced for meals provided by PSU. Alcohol is not reimbursable.
- 7.2.4 The use of vehicles is reimbursable at the [current transportation reimbursable rate](http://abs.psu.edu/TravelRates/Mileage/Actual/), URL <http://abs.psu.edu/TravelRates/Mileage/Actual/>
- 7.2.5 Expense of reproductions, postage and handling of Drawings, and other documents.
- 7.2.6 Long-distance communications, and any necessary fee or permit payment required and paid to any governing body or authority having jurisdiction over the Project.
- 7.2.7 Reimbursable expenses shall be submitted with supporting documentation, which shall include detailed, itemized receipts.

ARTICLE 8: COMPENSATION AND PAYMENT

8.1 BASIC SERVICES COMPENSATION AND PAYMENT

- 8.1.1 The Owner agrees to pay the Professional as compensation for those Basic Services described in Article 9 an amount not to exceed _____ Dollars (\$_____).
- 8.1.2 Payment for Basic Services will be made monthly by the Owner in proportion to the service actually performed.

8.2 REIMBURSABLE EXPENSES

The Owner agrees to pay the Professional as compensation for his Reimbursable Expenses, as defined in Paragraph 7.2, an amount not to exceed _____ Dollars (\$_____).

8.3 ADDITIONAL PROVISIONS

- 8.3.1 Payments are due and payable forty-five (45) days from the date of approval by the Owner of the Professional's invoice.
- 8.3.2 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.

8.4 OWNER'S RIGHT TO WITHHOLD PAYMENT

- 8.4.1 In the event that the Owner becomes credibly informed that any representation of the Professional provided pursuant to Article 6 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.

8.5 PROFESSIONAL'S RECORDS

- 8.5.1 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.

ARTICLE 9: BASIC SERVICES

The Basic Services shall be those contained in the attached letter of proposal from the Professional 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.

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

SAMPLE