

FOR PSU USE ONLY	
BUDGET	
JOB	
REFERENCE	
CODE	

FORM OF AGREEMENT 2-C

THE PENNSYLVANIA STATE UNIVERSITY
OWNER AND CONTRACTOR
CONTRACT

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

Contractor Name:

**E-Mail:
Contact Name:**

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

Project Number: XXXXXX
Project Name: XXXXXX
Campus Location: XXXXXX
County: XXXXXX
Building Name: XXXXXX
Building Number: XXXXXX
PSU Project Leader: XXXXXX

Contract Award Amount: XXXXXX (\$XXXXXX)
Date of Substantial Completion: XXXXXX
Date of Final Completion: XXXXXX
Liquidated Damages: XXXXXX
Prevailing Wage Serial Number: XXXXXX
QuestCDN Project/Reference Number: XXXXXX

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

Professional (A/E): XXXXXX
Contact Name: XXXXXX
Address: XXXXXX
Phone: XXXXXX
E-Mail: XXXXXX

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

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

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

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

ARTICLE 1 – GENERAL CONTRACT DEFINITIONS

- 1.1. THE CONTRACT DOCUMENTS: The Contract Documents consist of the Form of Agreement 2-C, hereinafter called the Agreement, Additional Terms and Conditions of the Contract, Drawings, Specifications, Addenda issued prior to receipt of bids, Bid Proposal submitted by Contractor, other documents listed in the Agreement, and those modifications to the Contract as follows:
 - 1.1.1. Owner's written authorization to the Contractor for changes to the Work
 - 1.1.2. Change Order
 - 1.1.3. A written order for a minor change in the Work issued by the Professional
- 1.2. THE CONTRACT: The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral.

The Contract may be amended only by those modifications described in Paragraph 1.1.
- 1.3. OWNER: The Owner is The Pennsylvania State University, a corporation created and existing under the laws of the Commonwealth of Pennsylvania, hereinafter called the Owner, and shall mean the Owner or the Owner's authorized representative.
- 1.4. PROFESSIONAL: The Professional is the person lawfully licensed to practice architecture or engineering, or the firm employed to provide architectural or engineering services. The term "Professional" shall mean the Professional or the Professional's authorized representative.
- 1.5. CONTRACTOR: The Contractor is the individual, corporation, company, partnership, firm, or other organization that has contracted to perform the Work under the Agreement with the Owner. The term "Contractor" shall mean the Contractor or the Contractor's authorized representative.
- 1.6. SUBCONTRACTOR: A Subcontractor is a person or organization who contracts under, or for the performance of part or all of, the Contract between the Owner and the Contractor. The subcontract may be direct with the Contractor or with another Subcontractor. The term "Subcontractor" shall mean the Subcontractor or the Subcontractor's authorized representative.
- 1.7. THE WORK: The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract.
- 1.8. THE PROJECT: The term "Project" shall comprise the Work defined by the Contract Documents and may include Work by the Owner or other Separate Contractors, or the Professional.
- 1.9. THE DRAWINGS: The Drawings are the graphic portion of the Contract Documents generally consisting of plans, elevations, sections, details, diagrams and schedules of the Work.
- 1.10. THE SPECIFICATIONS/PROJECT MANUAL: The Specifications are the written portion of the Contract Documents generally outlining the requirements for materials, equipment, construction systems, methods, standards, workmanship and performance necessary to properly complete the Work.

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

- 1.11. DAY: Whenever the word "day" is used in the Contract Documents, it shall be interpreted to mean a calendar day unless otherwise noted.
- 1.12. THE CONTRACT SUM: The Contract Sum is the total compensation payable to the Contractor for performing the Work as specified in the Contract Documents or subsequently adjusted by modification to the Contract.
- 1.13. CLAIM: A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 1.14. SCOPE OF WORK: All Work reasonably contemplated, required, implied or reasonably inferable by the Contract Documents, whether or not explicitly contained in the Contract Documents.
- 1.15. SUBSTANTIAL COMPLETION: "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.

ARTICLE 2 – CONTRACT DOCUMENTS

- 2.1. OWNERSHIP AND USE OF DOCUMENTS: All Drawings, Specifications and other documents of the Work furnished by the Professional are and shall remain the Professional's property. They are not to be used by the Contractor on other projects without written consent of the Owner and the Professional.
- 2.2. INTENT OF DOCUMENTS: The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Professional of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Professional to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinate and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed, and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.
- 2.3. AS-BUILT AND RECORD DRAWINGS: The Contractor shall, at the time of substantial completion of the Work, deliver to the Professional and the Owner the complete set of as-built drawings in .pdf format, or as otherwise requested by the Owner.

ARTICLE 3 – INSURANCE

3.1. CONTRACTOR'S INSURANCE

- 3.1.1. Before commencing the Work and as a condition precedent to payment, the Contractor shall procure and maintain the following insurance, in amounts not less than that specified for each type:
- 3.1.2. Workers' Compensation for statutory obligations imposed by workers' compensation and occupational disease laws. Employers' Liability insurance shall be provided with limits not less than:
1. \$500,000 bodily injury by accident per accident
 2. \$500,000 bodily injury by disease policy limit
 3. \$500,000 bodily injury by disease per employee
- 3.1.3. 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.
- 3.1.4. 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 Contractor 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 OVER \$1,000,000

- 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 Contractor 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.

“The Pennsylvania State University” must be named as an additional insured. Additionally, both the PSU Project and QuestCDN Numbers must be indicated on the Certificate(s).

Prior to the commencement of on-site Work, an Insurance Certificate evidencing the above required coverages, limits, and the Commercial General Liability additional insured provision, must be provided to the University, with the Certification Holder as follows:

The Pennsylvania State University
c/o 2-C Administration
#106 Physical Plant Building
University Park, PA 16802

Insurance coverages must be written with an insurer rated not less than A- by A.M. Best.

- 3.2. PROFESSIONAL LIABILITY INSURANCE: Where professional services are being provided by licensed and non-licensed professionals, the Contractor shall obtain, either itself or through the Design Professional, 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 Contractor. This coverage shall be continued in effect for 3 year(s) after the Date of Substantial Completion.

- 3.3. 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 Contractor and those Subcontractors 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 OVER \$1,000,000

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

- 3.3.1. 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.
- 3.3.2. The insurance limits required for the Employers' Liability, Business Automobile Liability and CGL coverage required under subsection 4.1 may be provided by a combination of primary and Excess or Umbrella Liability policies.
- 3.4. The Owner must be named on the Contractor's Commercial General Liability insurance as an additional insured.
- 3.4.1. The Contractor shall maintain in effect all insurance coverage required under Article 4 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.
- 3.4.2. If the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Design-Builder, or terminate this Agreement.
- 3.4.3. Insurance policies required under subsection 4.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 days before coverage is non-renewed by the insurance company and (b) within 10 business days after cancelation of coverage by the insurance company.
- 3.4.4. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Contractor 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 4.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Contractor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.
- 3.4.5. The Contractor's insurance shall be primary and non-contributory to the University's insurance.
- 3.4.6. Failure of the Contractor to procure, carry, and maintain the required insurance shall not relieve the Contractor, and any Subcontractor thereof, of any obligation or liability assumed under this Agreement, nor of any obligation or liability imposed by law.
- 3.4.7. Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of the Contractor.
- 3.5. PROPERTY INSURANCE: 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 Contractor, Subcontractors, Subsubcontractors, Material Suppliers and Design-Professional 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 Contractor) 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 Contractor, Subcontractors, Subsubcontractors, 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.

3.5.1. The Builder's Risk property insurance has a deductible. The Contractor 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. Contractor's payment towards the deductible will not exceed \$25,000 per occurrence.

3.5.2. 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 Contractor and the Design-Professional before the Work is commenced. The Contractor 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 Contractor's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

3.5.3. 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 Contractor before the Work commences. The Contractor 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.

3.5.4. Owner and Contractor waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals 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 Contractor may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 4.4.1.

3.5.5. 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 Contractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

3.6. OWNER'S INSURANCE:

3.6.1. 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.

3.6.2. 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.

3.7. WAIVERS OF SUBROGATION: The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Professional, Professional's consultants, Separate Contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Professional, Professional's consultants, Separate Contractors, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification,

contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 4 – GOVERNING LAWS

- 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 contract, the parties agree to submit any claim to the competent courts of Centre County, Pennsylvania.
- 4.2. GOVERNING LAWS: All work will be done in a workmanlike manner and follow all applicable local, state, and federal codes and safety regulations.
- 4.3. TAXES (ACT 45 – Sales Tax Applicability to PSU Construction Contracts): The Contractor shall pay sales, consumer, use and similar taxes for the Work on portions thereof provided by the Contractor which are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect. The Contractor is obligated to pay all Pennsylvania sales tax with the exception of those items for which an exemption might be claimed under Sales and Use Tax Regulation 150 (S31.11--SS31.16).

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

- 4.4. FEDERAL CLEAN AIR ACT: The Contractor agrees to fully protect, indemnify, hold harmless and defend the Owner against any and all liability, including assessed violation fines, for failure to comply with the Federal Clean Air Act [42 U.S.C. §7401 et seq., amended 1990], with regards to handling, venting, and/or disposing of any and all refrigerants used in the performance of the Work. A copy of employee(s) or subcontractor(s) Federal Certification numbers shall be provided to the Owner upon request.
- 4.5. PREVAILING WAGE ACT: This project is subject to the Pennsylvania Prevailing Wage Act, Act No. 442, August 15, 1961 (P.L. 987), as amended August 9, 1963, Act No. 342. All Contractors and Subcontractors shall comply with all requirements of this Act.
- 4.6. STEEL PRODUCTS PROCUREMENT ACT

4.6.1. This project is subject to the provisions of the Steel Products Procurement Act of 1978 (P.L. 6, No. 3) as amended by the Act of July 9, 1984 (P.L. 674, No. 144). All Contractors, Subcontractors, and Material Suppliers shall be required to comply with all provisions of this Act.

4.6.2. The Contractor shall be required to provide with each Application-Certificate of Payment form an executed copy of the Certification of Compliance with the Steel Products Procurement Act form and additional documentation, including but not limited to, invoices, bills of lading, mill certifications, or other acceptable evidence that the steel products represented on the payment application comply with one or more of the following categories:

- (1) That the steel utilized on this project was melted and manufactured in the United States; and/or
- (2) The product contains both foreign and United States steel, and at least seventy-five percent (75%) of the cost of all of the articles, materials, and supplies incorporated in the product have been mined, produced, or manufactured, as the case may be, in the United States; and/or
- (3) The steel product is not produced in the United States in sufficient quantities to meet the requirements of the contract, and prior written approval to use foreign steel has been obtained from The Pennsylvania State University.

4.6.3. Any nonconforming steel products incorporated into the work shall be removed and replaced by the Contractor, at its own expense, with products meeting the requirements of the Act.

4.6.4. Willful violation of this Act can result in penalties, including (but not necessarily limited to) prohibition from submitting any bids, or performing any work, or supplying any materials to a public agency for a period five (5) years from the date of the determination that a violation has occurred.

ARTICLE 5 - STANDARDS, SUBSTITUTIONS, AND SHOP DRAWINGS

- 5.1. SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES (as/if required by the Owner, or as otherwise specified in the Contract Documents): The approval of the shop drawings, product data or samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner and the Professional in writing of such deviation at the time of submission and the Owner or the Professional has not objected to the specific deviation. The approval shall not relieve the Contractor from responsibility for errors or omissions in the shop drawings, product data, or samples. The approval of a separate item shall not indicate approval of an assembly in which the item functions. The Contractor is required to submit a complete set of approved electronic submittals in .pdf format organized by CSI division to the Owner at the time of Substantial Completion. Additionally, all Operation and Maintenance data is required to be submitted in electronic .pdf format to the Owner subsequent to approval by the Professional. The Contractor is required to organize information by system and CSI division.

ARTICLE 6 – KNOWLEDGE OF CONTRACT REQUIREMENTS

- 6.1. EXAMINATION AND CONDITIONS AT THE SITE: The Contractor is responsible for having visited the site and having ascertained and informed itself, its Subcontractors and materialmen, of all pertinent local conditions such as location, accessibility, and general character of the site or building, the character and extent of existing Work within and adjacent to the site, any other Work being performed thereon at the time of the submission of the Contractor's proposal, and subsurface conditions. Any failure to do so will not relieve the Contractor from responsibility for successfully performing the Work without additional expense to the Owner. Additionally, the Contractor shall maintain at the site one copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Product Data, Samples and Contract Modifications, in good order and marked to record all changes made during construction.

ARTICLE 7 – CONTRACT ADMINISTRATION

- 7.1. CLAIMS: Claims by either party must be made within fourteen (14) days after occurrence of the event giving rise to such Claim or within fourteen (14) days after the claimant first becoming aware or reasonably should have become aware of the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.
- Pending final resolution of a Claim unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- 7.2. TERMINATION FOR CONVENIENCE OF OWNER: Prior to, or during the performance of the Work, the Owner reserves the right to terminate the Contract for unforeseen causes including but not limited to court orders, loss of funding, acts of the federal government to discontinue the Work, etc., that may occur. Upon such an occurrence, the Owner would notify the Contractor in writing and establish reasonable sequence and timing of actions for termination and will determine amounts due to Contractor for work completed.

ARTICLE 8 – CONSTRUCTION

- 8.1. CONSTRUCTION SAFETY REQUIREMENTS: Contractor is obligated to adhere to the safety requirements as outlined in the following: Construction Safety Requirements, The Pennsylvania State University, Office of Physical Plant, Design and Construction Standards, Division 00, Sub-Section 00 01 00. (http://legacy.opp.psu.edu/planning-construction/design_and_construction_standards/documents/PSU-OPP-Contractor-Safety-Requirements)
- 8.2. SUPERVISION: The Contractor shall supervise and direct the Work. The Contractor shall be solely responsible for all construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under the Contract. The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.
- 8.2.1. The Contractor shall employ a competent superintendent who shall be in attendance at the Project site during the progress of the Work. The superintendent shall be satisfactory to the

Owner, and shall not be changed except with the written approval of the Owner unless the superintendent leaves the employment of the Contractor.

- 8.3. REJECTION AND CORRECTION OF WORK: Any Work rejected by the Professional or the Owner or found not to be in accordance with the Contract Documents shall be corrected promptly by the Contractor at its cost and with no change in Contract Time.

The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or Separate Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

- 8.4. ACCEPTANCE OF NON-CONFORMING WORK: If the Owner prefers to accept Work found not to be in accordance with the Contract Documents, the Owner may do so, in which case the Contract Sum will be reduced downward appropriately as determined by the Owner.

- 8.5. OWNER'S RIGHT TO CARRY OUT THE WORK: If the Contractor fails or neglects to carry out the Work in accordance with the Contract Documents, or ceases Work for a period of seven (7) consecutive days, the Owner may, without prejudice to other remedies the Owner may have, perform or cause to be performed the Work. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of performing Work pursuant to this subsection. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

- 8.6. CLEANUP: The Contractor shall keep the premises clean at all times of dirt, rubbish and debris resulting from the Work, and shall remove rubbish and debris in metal containers at the end of each working day. The Contractor shall remove rubbish and cartons resulting from the installation of fixtures and equipment. Prior to substantial completion of the Work, the Contractor shall do the final cleaning and polishing of the surfaces of the Contractor's installations as may be required by the various Specifications sections. The Contractor, in addition, shall employ a professional cleaning organization to remove all paint and stains from glass, and to wash all glass, throughout the Work, to clean and polish the finished surface of all fixtures, equipment and accessories and to vacuum clean all floors. If the Contractor fails to clean up as outlined above, the Owner may do so and the cost thereof shall be charged to the Contractor.

- 8.7. PROTECTION OF PROPERTY: Protect all trees, shrubs, lawn areas, curbing, walks, roadways, and ground areas from damage during the course of the construction. Protect the existing structures and Contractors shall use care in the work in general in, on, and around the structures. Repair all damage to the satisfaction of the University at the responsible party's cost and expense.

- 8.8. POWER REQUIREMENTS: All minor power requirements will be provided by PSU. Extension cords and other equipment used to transport that power to an exact work area is under the responsibility of the Contractor.

- 8.9. L&I INSPECTIONS: The building permit for the work was issued by the Department of Labor and Industry (L&I). The Contractor is responsible for the coordination of all required L&I inspections per the Building Permit.

- 8.10. CONSTRUCTION FENCING: The Contractor shall be required to provide a construction fence enclosing the area of the work within the central limits. Construction fencing is also required for trailers and stored material that may be located outside the area of work. Fencing material should be adequate to protect persons and property. Provide a six foot high (6') chain-link fence with galvanized frame and fabric, and adequate gates as required. Posts shall be 2 inch diameter and spaced at maximum of 8 feet O.C. with top stabilizing bar. Fencing to be installed to withstand wind gusts of up to 60 mph. Blue mesh is required for appearance purposes along the fencing. Fabric shall be PVC vinyl coated polyester, equal to Tenn-air curtain style, color US Open blue as manufactured by M. Putterman and Co., Inc. (800) 621-0146. Mesh shall have reinforced hems and grommets every 12 inches on all edges. Install windscreen on construction side of fence, using 50-pound break strength tie wraps at every grommet.

- 8.11. PROJECT SIGN:

8.11.1. On projects funded solely by the University, **one** project sign may be prepared and erected by the General Contractor to inform the public of the construction activity in progress. The sign shall conform to the following specifications:

- a. Size: no sign shall exceed a total of 32 square feet.
- b. Material:

- i. Vinyl mesh as defined in F12.2 (Construction Fence)
 - ii. Suitable exterior rigid sign substrate.
 - iii. Project signs must be attached to the ground or construction fence using suitable fasteners
 - c. Location
 - i. The sign shall be placed in a location visible to primary flow of vehicular or pedestrian traffic.
 - ii. No project sign shall obstruct the vision of drivers or pedestrians.
 - iii. No project sign may be mounted at a height in excess of 15 feet from the ground.
- 8.11.2. Sign Content shall be limited to the following information:
- d. Project name as defined by the university.
 - e. Anticipated construction completion date.
 - i. Example: "Named Classroom Building Opening Fall 2013"
 - f. University approved architectural rendering.
 - g. University identification mark per the graphic identity system
- 8.11.3. Project signs shall not include references to design consultants, contractors, suppliers, or other construction related entities.
- 8.11.4. The Contractor is responsible for maintaining the sign in good condition throughout the construction period.
- 8.12. **EXISTING UNDERGROUND UTILITIES**
- 8.12.1. The existence and locations of underground utilities indicated on the drawings are not guaranteed. The Contractor shall investigate and verify in the field before starting any work.
- 8.12.2. All excavation within three (3) feet of any existing underground utility line shall be accomplished by hand labor. Extreme caution shall be used in this area to prevent any damage to existing facilities.
- 8.12.3. The Contractor shall adequately protect from damage (including shoring, if necessary), all underground utilities uncovered or exposed. The Contractor shall be responsible for all damage to existing underground utilities caused by its work and shall repair by a method approved by the University.
- 8.12.4. Utilities serving existing buildings, installation, or facilities shall not be interrupted until the Contractor has made the necessary arrangements with and has received approval from the University.
- 8.12.5. In the event that interruption of any existing utility service is necessary, the responsible Contractor shall be required to make all arrangements for shutdown and start-up of such service with the University representative.
- 8.12.6. The University Park campus is traversed by a 12" high pressure gas transmission line. The Contractor must follow precautions and requirements as outlined on the plan set. The routing of the gas line is available at the following link: http://www.opp.psu.edu/planning-construction/design_and_construction_standards/documents/job-kit-construction-services/columbia-gas-line-routing-map/view
- The Contractor must review the project location relative to the gas routing and coordinate all requirements with Columbia Gas.
- 8.13. **CONSTRUCTION WASTE MANAGEMENT**: The Contractor is required to recycle and/or salvage 75% of construction, demolition, and land clearing waste. A waste management plan is to be developed for the project which outlines how you will achieve the required recycling rate, including materials to be recycled or salvaged, materials handling requirements, and how you will communicate the plan to your crews and subcontractors. The waste management plan is to be approved by the OPP Project Leader.
- 8.14. **TEMPORARY SANITARY FACILITIES**: Sanitary facilities will not be provided by the Owner. The use of Owner's facilities is prohibited (unless prior approval is granted by the Owner).
- 8.15. **JOB SITE SECURITY**: The University will not provide job site security. The University assumes no responsibility for damage or loss to the Contractors' property.

8.16. ASBESTOS REMOVAL:

8.16.1. The University has an ongoing asbestos identification and removal program. On renovation projects where the possibility exists that material containing asbestos fibers may be encountered, the situation will be reviewed by the University and a course of action determined.

8.16.2. Possible asbestos removal situations will be discussed between the Professional and the University on a project-by-project basis.

8.16.3. If asbestos is found to be present after construction is underway, the University Construction Inspection Office is to be notified immediately so that proper removal work can begin promptly. Removal or repairs will then be initiated following all applicable EPA and OSHA regulations.

8.17. SUBCONTRACTS: The Contractor agrees to bind every Subcontractor, and every Subcontractor agrees to be bound, by the terms of the Agreement, the Additional Terms and Conditions of the Contract, and the Drawings and Specifications insofar as they are applicable to the Subcontractor's respective portion of the Work.

8.18. PERMITS, FEES AND NOTICES: The Contractor shall secure and pay for, with the exception of the building permit, all other permits, fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required.

It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Professional and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Professional and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

8.19. ACTS AND OMISSIONS: The Contractor shall be responsible for acts and omissions of the Contractor's employees and Subcontractors, their agents and employees and other persons performing portions of the Work under a contract with the Contractor.

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Professional in the Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

8.20. LEAD-FREE PLUMBING CERTIFICATION. The Contractor shall provide a certification that all plumbing materials are lead-free and meet the requirements of the Pennsylvania Plumbing and Lead Ban Notification Act. This certification shall be signed by the Contractor, notarized and submitted to the University before the water service turn-on.

ARTICLE 9 – CHANGES IN THE WORK

9.1. CHANGE ORDER/GROSS COST OF INCREASE OR REDUCTION IN THE WORK: The gross cost to the Owner for the estimated or the actual cost of the Work performed by the Contractor or Subcontractor shall include the net cost of the Work to the Contractor or Subcontractor plus an allowance for overhead and profit. The Contractor or Subcontractor **actually performing the Work** will be allowed a maximum markup for overhead and profit of 15% on labor only and 10% on material and equipment (not including sales tax). Markup on sales tax is not permitted.

In addition to the markups allowed for labor, material, and equipment for the Contractor or Subcontractor **actually performing the Work**, the Owner will pay a maximum aggregate markup of 10% for Subcontractor management on the **actual** cost of the Work performed regardless of tier. **No other costs or markups will be permitted by any other tiered Contractor or Subcontractor.**

9.1.1. EFFECT OF AN EXECUTED CHANGE ORDER: The submission of a Change Order proposal by the Contractor and subsequent execution by the Owner shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor waives and forever releases any claim against the Owner for additional time or compensation for

matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

ARTICLE 10 – CONTRACT COMPLETION TIME

- 10.1. NOTICE TO PROCEED: The Contract Time will begin on the date designated in the Notice to Proceed issued by the Owner and the Contractor is required to complete the Work in the time stated therein and in the time stated therein and in the Agreement

ARTICLE 11 – PAYMENTS AND COMPLETION

- 11.1. The Contractor agrees to begin the Work contemplated by this Contract within Ten (10) days after receipt of an executed contract and to substantially complete the same, ready for the Owner's occupancy and use, by the date of Substantial Completion specified herein. Contractor agrees to complete all punch list items by the date of Final Completion specified herein. Contractor agrees that time is of the essence of this Contract and if the Contractor shall fail to complete the Work within the time above specified, or such extension or extensions thereof as shall be granted, the Contractor shall pay Owner, as liquidated damages and not as a penalty for such failure, the amount specified herein, per, day for each and every calendar day thereafter until such Work shall be substantially completed and ready for the Owner's occupancy and use. Provided, nevertheless, if the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or Professional, or of any employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner, or by other causes which the Professional determines may justify a delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Professional may determine with the Owner's approval.
- 11.2. The Contractor shall submit a completed certificate of payment to the PSU Project Leader showing the amount of Work performed in the preceding calendar month. The Contractor shall indicate both the PSU project number and QuestCDN project number on the application for payment. (Text with blue font are active hyperlinks that contain corresponding forms.)
- 11.2.1. Except as otherwise agreed in writing by the parties, and except for any amounts withheld or disallowed due to deficiencies or errors in documentation as defined in Paragraph 2.6 below, payment of progress and final payment applications shall be due from the Owner forty-five (45) days after the end of a billing period or forty-five (45) days after delivery of the Certificate/Application for Payment, whichever is later. The Certificate/Application for Payment form to be used can be found at the following: [2-C Application/Certificate of Payment](#)
- 11.2.2. The First Certificate of Payment application and any progress payments shall be supported by such data substantiating the Contractor's right to payment as the Owner may require, including the following:
- A completed [Certificate of Payment](#) signed by the Contractor, OPP Representative, and the Professional. (Applicability of the Professional's signature determined by the Project Leader.)
 - A detailed cost breakdown. ([PSU Schedule of Values](#) can be used for this purpose.)
 - [Steel Certification Form](#).
- 11.2.3. The Final application shall be supported by such data substantiating the Contractor's right to payment as the Owner may require, including the following:
- A completed [Certificate of Payment](#) signed by the Contractor, OPP Representative, and the Professional. (Applicability of the Professional's signature determined by the Project Leader.)
 - Weekly payroll certifications (Commonwealth of Pennsylvania Department of Labor and Industry [Form LLC-25](#)) accumulated for the Project. These certifications shall be submitted in electronic format to the Contract Administration Financial Assistant.
 - OSHA recordable accident data, as/if applicable.
 - [Contractor's Affidavit for Final payment](#).
 - [Waiver of Mechanics' Liens](#).

- All Maintenance manuals, as-built drawings, and warranty certificates that may be required. (These documents shall be submitted to the Project Leader prior to or concurrent with the Final Payment Application.)
 - [Consent of Surety Company](#) if applicable.
- 11.2.4. The Contractor warrants that title to all Work covered by an Application Certificate of Payment will pass to the Owner at the time of payment. The Contractor further warrants that upon submittal of an Application Certificate of Payment all Work for which Certificates of Payment have been previously issued and payments received from the Owner shall be free and clear of liens, Claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a Claim by reason of having provided labor, materials and equipment relating to the Work. This provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract. Payments to the Contractor shall not be construed to release the Contractor from any obligations under this Contract. A Certificate of Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 11.2.5. Retainage shall be established by the Owner on a per-Project basis, and in no event shall exceed 6%.
- 11.2.6. PAYMENTS TO SUBCONTRACTORS: Upon receipt of payment from the Owner, the Contractor shall promptly pay each Subcontractor, out of the amount paid to the Contractor the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.
- The Professional or Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Professional and Owner on account of portions of the Work done by such Subcontractor.
- Neither the Owner nor Professional shall have an obligation to pay or to see to the payment of money to a Subcontractor.
- 11.2.7. WITHHOLDING OF PAYMENT: The Professional or the Owner may decline to make payment, may withhold funds, and if necessary, demand the return of some or all of the amounts previously paid to the Contractor or nullify that part of any Invoice to such extent as may be necessary to protect the Owner from loss because of any of the following:
- 11.2.7.1. Defective Work not yet remedied by the Contractor or defective work, in the opinion of the Owner, not likely to be remedied by the Contractor.
 - 11.2.7.2. Third party claims filed or reasonable evidence indicating probable filing of such claims.
 - 11.2.7.3. Failure of the Contractor to make payments promptly and properly to Subcontractors or others.
 - 11.2.7.4. Any evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.
 - 11.2.7.5. Damage to the Owner, another Contractor, or any third party.
 - 11.2.7.6. Any evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
 - 11.2.7.7. Failure to carry out the Work in accordance with the Contract Documents.
 - 11.2.7.8. Errors in Documentation: If a certificate of payment is filled out incorrectly or incompletely, or if there is any other defect or impropriety in an Invoice, the Professional or Owner shall give written notice to the Contractor within ten (10) working days after receipt of the Invoice, and the Owner shall make payment for the correct amount to the Contractor provided the Invoice is approved by the Professional in accordance with this Agreement.

- 11.2.7.9. Lack of required submissions as outlined in the Additional Terms and Conditions of the Contract.

ARTICLE 12 – CONTRACT WARRANTY PERIOD

- 12.1. WARRANTY: Upon acceptance and final completion of the project, the awarded contractor shall provide a minimum of one (1) year warranty on all products and workmanship.

ARTICLE 13 – EQUAL EMPLOYMENT OPPORTUNITY

13.1. EQUAL EMPLOYMENT OPPORTUNITY AND REFERRAL TO NON-DISCRIMINATION CLAUSE:

Contractor 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.

In performing the work or making or furnishing any article required by this Contract, the Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and all subsequent rules, regulations, and relevant orders of the Secretary of Labor. The Contractor will comply with all provisions of Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code, Chapter 49.

13.2. SOCIAL RESPONSIBILITY / CONTRACTOR CONDUCT

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

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

ARTICLE 14 – MISCELLANEOUS PROVISIONS

- 14.1. SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the parties hereto.
- 14.2. ASSIGNMENT: Neither the Owner nor the Contractor shall assign, sublet or in any manner transfer any right, duty, or obligation under this Agreement without prior written consent of the other party.
- 14.3. RELEASE OF INFORMATION: The Contractor understands and agrees that the Owner may release to taxing authorities any and all information relating to the Work.
- 14.4. BACKGROUND CHECK POLICY: The Contractor confirms that all employees (including the employees of any subconsultants/subcontractors) assigned to this project and who conduct their work on Penn State premises have had background checks that meet or exceed the University's standards for the type of work being performed per the background check process for third-party employees outlined in PSU Policy HR99 Background Check Process(<http://guru.psu.edu/policies/OHR/hr99.html>).
- 14.5. PUBLIC WORKS EMPLOYMENT VERIFICATION ACT: As a precondition to the award of the contract for the Work described herein, Contractor must complete the Commonwealth of Pennsylvania 'Public Works Employment Verification Form' ("Form") and provide a copy to Owner with the bid submission. Failure to include a completed E-Verify form with the bid submission may result in rejection of the bid as being non-responsive.

By submission of a bid and subsequent 2-C Form of Agreement award, the Contractor hereby affirms as follows:

- (1) Contractor is presently and shall remain in compliance with the Pennsylvania Public Works Employment Verification Act ("the Act") through utilization of the Federal E-Verify Program ("EVP") operated by the United States Department of Homeland Security.
- (2) Contractor will ensure that all contracts with subcontractors contain notification of the applicability of the Act, information regarding the use of EVP, and either a copy of the Form or a reference to the Pennsylvania Department of General Services website at www.dgs.state.pa.us, where the Form may be obtained. Contractor will further ensure that prior to beginning onsite or offsite work, every subcontractor shall submit a completed Form to the Owner.
- (3) Contractor and subcontractors shall utilize EVP to verify the employment eligibility of each new employee hired, whether the new employee will be performing onsite or offsite work, within five (5) business days of the employee's start date and shall maintain documentation of continued compliance with the Act for the duration of this Agreement.
- (4) Contractor and subcontractors shall cooperate with Owner and Pennsylvania Department of General Services in the event of an audit arising under the Act.

ARTICLE 15 – PERFORMANCE AND PAYMENT BONDS

15.2. PERFORMANCE AND PAYMENT BONDS (Applicability determined on a project by project basis by the Owner)

- 15.2.1. At the time of signing the Contract and before it becomes effective, the Contractor and its surety, acceptable to the Owner, shall execute two bonds each in the amount of 100% of the contract price of the Work awarded to the Contractor. The Bonds shall be written by a Surety authorized to do business in the Commonwealth of Pennsylvania and shall be delivered to the Owner prior to award of Contract and within three (3) days of the Owner's request thereof. The Attorney-in-Fact who signs the Bonds must be a resident of the Commonwealth of Pennsylvania and shall file with each Bond a certified and effectively dated copy of the Attorney-in-Fact's Power of Attorney.
- 15.2.2. One bond shall be a performance bond covering the faithful performance by the Contractor of all covenants and agreements on the part of the Contractor contained in this Contract.
- 15.2.3. The other bond shall be a labor and material payment bond protecting all parties that have performed labor or supplied material on this Contract from suffering any loss due to the failure of the Contractor to pay any or all obligations incurred under this Contract.
- 15.2.4. The Contractor shall pay all premiums for all bonds.
- 15.2.5. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor or Owner shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 15.2.6. Notwithstanding and in addition to the provisions relative to liens set forth in subsection 2, the parties hereto have executed a Waiver of Liens/Stipulation Against Liens Agreement, and Contractor has purchased a payment bond which shall serve as a guarantee of payment for the work, services, labor, materials and/or equipment provided by any and all subcontractors. Contractor hereby specifically waives all lien rights of subcontractors, as that term is defined under the Pennsylvania Mechanics' Lien Law of 1963. Contractor hereby covenants, promises and agrees that no mechanics' or materialsmen's lien or claim, or any other lien or claim, will be filed or maintained on the Property, or any grounds or curtilages appurtenant thereto, or any other structure or property owned by the Owner, either by
- 15.2.7. Contractor or any subcontractor, for or on account of any work, labor or materials supplied by any subcontractor in the performance of the Contract, or under any supplemental contract for extra work, in the erection, construction or completion of the improvements to the Property.

ARTICLE 16 – INDEMNITY

- 16.1. INDEMNIFICATION: To the fullest extent permitted by law, the Contractor shall appear for and defend, indemnify, and hold harmless the Owner, Professional, Professional's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, of whatsoever nature caused in whole or in part by the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not

such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 38.

In claims against any person or entity indemnified under this Paragraph 38 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 38 shall not be limited by a limitation on amount or type of damages, compensation or benefits payment by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this Paragraph 38 shall not extend to the liability of the Professional, the Professional's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Professional, the Professional's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

The status of the Contractor in the Work to be performed by it under this Contract is that of an Independent Contractor and as such the Contractor shall properly safeguard against any and all personal injury including death, or damage to the public, to public and private property, materials, and things; and as such, the Contractor alone shall be responsible for any and all damage, loss, or injury to persons or property that may arise or be incurred in or during the conduct or progress of said Work without regard to whether or not the Contractor, its Subcontractors, Agents, or Employees have been negligent; and the Contractor shall keep the Owner and Professional indemnified from and discharged of and from any and all responsibility and liability for risks and casualties of every description, as provided in the Agreement between the Owner and the Contractor.

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

THE PENNSYLVANIA STATE UNIVERSITY
OWNER

Title

ATTEST, Secretary

Date of Execution: _____