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**FORM OF AGREEMENT 1-CM-GMP**  
**THE PENNSYLVANIA STATE UNIVERSITY**  
**OWNER AND CONSTRUCTION MANAGER**  
**GUARANTEED MAXIMUM PRICE AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_  
in the year Two Thousand and Seventeen (2018) by and between

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

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

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

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

**ARTICLE 1: THE WORK AND THE DOCUMENTS FORMING THE AGREEMENT**

The Exhibits considered part of this agreement by reference or attached, as indicated, are shown in the listing below:

- Exhibit A      Preconstruction Proposal
- Exhibit B      Billable Hourly Rates
- Exhibit C      BIM Exhibit and Execution Plan Template
- *(insert additional Exhibits here as/if applicable)*

## ARTICLE 2: THE PROFESSIONAL

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

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

## ARTICLE 3: THE PROJECT TEAM AND GENERAL OBLIGATIONS OF CONSTRUCTION MANAGER

### 3.1 The Project Team

The Construction Manager, the Owner and the Professional, hereinafter called the "Project Team," shall work as a team from Notice to Proceed for this Agreement, receipt and acceptance of the Guaranteed Maximum Price and through construction completion and close-out. The Construction Manager shall provide leadership to the Project Team on all matters relating to construction.

### 3.2 General Obligations of Construction Manager

The Construction Manager agrees to provide leadership to the Project Team and to furnish all labor, material, tools, machinery, equipment, facilities and supplies to do all things necessary from the preconstruction through construction and completion of the Work; to furnish efficient business administration and superintendence; to have at the Work at all times an adequate supply of supervision, workers and materials, and to secure its execution in the best, most workmanlike, expeditious and economical manner consistent with the interest of the Owner.

### 3.3 Best Efforts and Collaboration

The Construction Manager, recognizing the relationship of trust and confidence established between the Construction Manager 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.

The Construction Manager agrees to promote a collaborative Project Team environment. By forming a collaborative Project Team, the parties intend to gain the benefit of an open and creative learning environment, where members are encouraged to share ideas freely in an atmosphere of mutual respect and tolerance. Project Team members shall work together and individually to achieve transparent and cooperative exchange of information in all matters relating to the Project and to share ideas for improving project delivery. Team members shall actively promote harmony, collaboration and cooperation among all entities performing on the Project.

## ARTICLE 4: DEFINITIONS

The term "Project" shall comprise the Work defined by the Contract Documents and may include Work by the Owner or other separate contractors, Trade Contractors, Sub-Trade Contractors, or the Professional.

The term "Work" shall mean whatever is done by or required of the Construction Manager 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 Construction Manager, fuel, heat, light, cooling, and all other utilities as required by this Contract.

The term "day" shall mean calendar day unless otherwise specifically designated.

The Trade Contractor is a person or organization who contracts under the Construction Manager for a portion of the Work defined in the Contract between the Owner and the Construction Manager. The Trade Contract may be directly with the Construction Manager or through a subcontract with another Trade Contractor.

The Guaranteed Maximum Price is the maximum compensation payable to the Construction Manager in performance of the Work for the Project as specified in the Contract Documents or subsequently adjusted by modification to the Contract through a Guaranteed Maximum Price Change Order.

The Drawings are the graphic portion of the Contract Documents generally consisting of plans, elevations, sections, details, diagrams, and schedules of the Work.

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 of the Work including the Specifications, bidding requirements, sample forms, General Conditions and Special Requirements.

Scope of Work is all Work reasonably contemplated by the Contract Documents whether or not explicitly contained in the Contract Documents.

## ARTICLE 5: CONSTRUCTION MANAGER'S SERVICES

The Construction Manager will perform the following services under this Agreement in each of the two phases described below.

### 5.1 Pre-Construction Services

5.1.1 Consultation During Project Development: Schedule and attend regular or biweekly meetings with the Professional and Owner during design development to advise on site use and improvements, selection of materials, building systems and equipment. Provide recommendations on construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs or materials, preliminary budgets, and possible economies and schedule improvements.

5.1.2 Scheduling: Develop a Project Master Schedule that coordinates and integrates the Professional's design efforts with construction schedules. Update monthly the Project Master Schedule, incorporating a detailed schedule for the construction operations of the Project, including realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products requiring long lead-time procurement. Include the Owner's occupancy requirements showing portions of the Project having occupancy priority.

5.1.3 Project Construction Budget: Prepare a Project budget as soon as major Project requirements have been identified, and update periodically for the Owner's approval. Prepare an estimate based on a quantity survey of Drawings and Specifications at the end of the schematic design phase for approval by the Owner as the Project Construction Budget. Update and refine this estimate for the Owner's approval as the development of the Drawings and Specifications proceeds, and advise the Owner and the Professional if it appears that the Project Construction Budget will not be met and make recommendations for corrective action.

5.1.4 Coordination of Contract Documents: Review the Drawings and Specifications with the Professional and Owner as they are being prepared, recommending alternative solutions whenever design details affect construction feasibility, schedules, or create construction conflicts, without assuming any of the Professional's

responsibilities for design. Refer all questions relative to interpretation of the design intent to the Professional in writing and insure communications between the Owner, Construction Manager and Professional.

5.1.5 Construction Planning: Schedule and purchase all materials and equipment requiring long lead-time procurement and coordination preparation of necessary Contract documents by the Professional. Expedite and coordinate delivery of the long lead-time purchases and schedule the purchase and coordinate the delivery of Owner-furnished equipment.

Determine the appropriate division of documents into fast-track bid packages if requested by the Owner and review the drawings and specifications to: (1) ascertain if areas or jurisdiction overlap, (2) verify that all Work has been included, and (3) allow for phased construction.

After consultation with the Owner and the Professional, determine the division of Work in the Drawings and Specifications to facilitate the bidding and awarding of Trade Contracts, allowing for phased construction, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provision for temporary facilities.

Review Drawings and Specifications with the Professional to eliminate areas of conflict and overlapping in the Work to be performed by the various Trade Contractors and prepare prequalification criteria for bidders.

5.1.6 Cost Control: Develop and monitor an effective system of Project Cost Control. Develop cash flow reports and forecasts as needed. Identify variances between forecasted or actual costs and estimated costs, and advise Owner and Professional whenever projected cost differs from budget. Provide value engineering as needed or when requested by Owner.

5.1.7 Special Consultants: If requested, assist the Owner in selecting and retaining the professional services of special consultants (i.e., testing lab, surveyors, etc.) and coordinate the services.

5.1.8 Reports: Record the progress of the Project, and record minutes of all meetings in a format acceptable to the Professional and the Owner and insure distribution to all appropriate parties.

5.1.9 Bidding and Award of Trade Contracts: All Work to be performed by Trade Contractors will be competitively bid. The Project Team will determine which trade packages will require prequalification by the Construction Manager. Construction Manager to prequalify all bidders per established process approved by the Project Team. Review all bidders lists with Owner and Professional for approval before proceeding.

The following trade Categories of work, whether performed by Subcontractors bidding directly to the Construction Manager, or if self-performed by the Construction Manager, require PSU prequalification:

- *Asbestos Abatement*
- *Telecommunications*
- *Demolition/Hauling*
- *Access Control and Surveillance*

Establish bidding schedules, issue bidding documents, and conduct pre-bid conferences to familiarize bidders with the documents and with any special systems, materials, methods or conditions.

Coordinate directly with the Owner to receive bids. Prepare bid analyses, and review bids with the Owner and Professional. Award Contracts. Construction Manager shall have final authority and responsibility for selection of all Trade Contractors, and award of all Trade Contracts. Refer to Article 8.2 "Trade Contracts" of the General Conditions of the Contract.

5.1.10 Building Information Modeling (BIM): Construction Manager shall collaborate with the Professional to establish a BIM execution plan for the project, identifying uses and processes that add value to the project. Construction Manager to determine and outline model protocols with the Professional. At a minimum, Construction Manager shall utilize BIM for the M.E.P. coordination process, and shall provide the Owner with

fully coordinated as-builts of the building systems. Construction Manager shall ensure that this BIM process is properly included in the Trade Contractor bid packages, as applicable. Refer to BIM Addendum Exhibit.

5.1.11 Collaboration: The Construction Manager is to establish a collaborative environment with the Project Team. A Collaboration Charter is to be developed by the Project Team and the Construction Manager is to adhere to the principles established. The Collaboration Charter is to be finalized by the Project Team early in the preconstruction phase of the project.

## 5.2 CONSTRUCTION SERVICES AND ADMINISTRATION

5.2.1 Project Control: Direct and monitor the Work of the Trade Contractors and coordinate the Work with the activities and responsibilities of the Owner, Professional, and Construction Manager to complete the Project in accordance with the Owner's objectives. Be responsible for insuring the completion of the Work in accordance with the provisions of Article 8.

5.2.2 Project Staffing: Maintain a competent full-time staff at the Project site to coordinate and provide general direction of the Work and progress of the Trade Contractors on the Project. The CM shall provide the Project Manager for Construction and the Field Superintendent for Construction indicated on the Construction Management Services Proposal Form (as applicable) and as presented at the interview meeting (as applicable), unless otherwise approved in writing by the Owner. Changes in the above-mentioned staff shall only be made with the concurrence of the Owner. A request for change in CM staff will be presented in writing and may be initiated by any member of the Project Team. At the Owner's request, the CM shall make changes in staff.

5.2.3 Establish on-site organization and lines of authority and project processes in order to carry out the overall requirements of the Project Team.

5.2.4 Establish procedures for coordination among the Owner, Professional, Trade Contractors, and Construction Manager with respect to all aspects of the Project and implement such procedures to insure that all parties receive the correct information.

5.2.5 Schedule and conduct, at a minimum, biweekly progress meetings at which Trade Contractors, Owner, Professional, and Construction Manager can discuss jointly such matters as procedures, progress, problems, and scheduling.

5.2.6 Schedule and conduct, at a minimum, biweekly meetings with Owner and Professional to discuss progress, resolve problems, and update schedule.

5.2.7 Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started or incomplete and recommend to the Owner and Trade Contractors adjustments in the schedule to meet the Contract completion date. Document all changes in schedule. Update schedule on a monthly basis or as needed.

5.2.8 Determine the adequacy of the Trade Contractors' personnel and equipment and the availability of materials and supplies to meet the schedule, and take appropriate courses of action with Trade Contractors when requirements are not being met.

5.2.9 Physical Construction: Provide all supervision, labor, materials, construction equipment, tools, and all items which are necessary for the completion of the Work which are not provided by either the Trade Contractors or the Owner, and in accordance with Article 7, Paragraph 7.2. To the extent that the Construction Manager performs any Work with its own forces, the Construction Manager shall, with respect to such Work, perform in accordance with the Plans and Specifications and in accordance with the Procedure applicable to the Project.

5.2.10 Cost Control: Develop and monitor an effective system of Project cost control. Develop cash flow reports and forecast as needed. Identify variances between actual and budgeted or estimated costs, and advise Owner and Professional whenever projected cost differs from budgets or estimates as a result of a change in Scope of Work for which a written request for increase in Guaranteed Maximum Price will be made.

Maintain cost accounting records on authorized Work performed under unit costs, actual costs for labor and material, or other basis requiring accounting records. Afford the Owner access to these records at all times and preserve them for a period of three (3) years after final payment.

5.2.11 Change Orders: Develop and implement a system for the preparation, review, and processing of Change Orders. Recommend necessary or desirable changes to the Owner and the Professional, review requests for changes in Scope of Work, submit recommendations to the Owner and the Professional, and assist in negotiating changes in cost and/or time.

5.2.12 Payments to Trade Contractors: Develop and implement a procedure for review, processing, and payment of applications by Trade Contractors for progress and final payments.

5.2.13 Permits and Fees: Assist the Owner and Professional in obtaining a building permit. Obtain all other necessary permits for construction and permanent improvements, including permits and inspection of temporary facilities required to be obtained. Assist in obtaining approvals from all the authorities having jurisdiction.

5.2.14 Inspection: Inspect the Work of Trade Contractors for defects and deficiencies in the Work. The Owner and/or Professional will co-inspect as deemed necessary by the Owner.

5.2.15 Safety: Set up a written Job Safety Program and review the safety programs of each of the Trade Contractors and make appropriate recommendations. In making such recommendations and carrying out such review, the Construction Manager shall be required to make regular and complete inspections to check safety precautions and programs in connection with the Project. Safety Program will incorporate on-site review on a weekly basis with Trade Contractors. The performance of such services by the Construction Manager shall not relieve the Construction Manager and Trade Contractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work.

Construction Manager and each Trade Contractor shall be obligated to adhere to the safety requirements as outlined in the most current Contractor Safety Requirements document located on the Office of Physical Plant website([www.opp.psu.edu](http://www.opp.psu.edu)), Design and Construction Standards, Division 00.

5.2.16 Document Interpretation: Refer all questions for interpretation of the documents prepared by the Professional to the Professional in writing by use of a Request for Information (R.F.I.) form, the format of which shall be approved by the Owner prior to use. Keep a log of R.F.I.'s and responses.

5.2.17 Shop Drawings and Samples: In collaboration with the Professional, establish and implement procedures and schedules for expediting the processing and approval of shop drawings and samples in accordance with the procedures outlined in the General Conditions of the Contract.

5.2.18 Reports and Project Site Documents: Record the progress of the Project. Submit written progress reports to the Owner and the Professional including information on the Trade Contractors' Work and the percentage of completion. Maintain a written daily construction log and make available to the Owner and/or Professional when requested. The daily log shall include but not be limited to the following: record of weather, Trade Contractors' work at the site, the number and type of workers on site, work accomplished, problems encountered, unusual events, and other relevant data that the Owner and Professional may reasonably require. Record job progress monthly using photographs and written reports.

Maintain at the Project site, on a current basis, records of all necessary Contracts, Drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. Obtain data from Trade Contractors and maintain on site a current set of record Drawings, Specifications and operation manuals. At the completion of the Project, deliver all such records to the Professional for the Professional's review and submittal to the Owner.

5.2.19 Substantial Completion and Final Completion: Substantial Completion and Final Completion shall be determined in accordance with the General Conditions of the Contract.

5.2.20 Start-Up: With the Owner's operating/maintenance personnel, direct the checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up, testing, demonstration and instruction by the Trade Contractors. Schedule all of these with the Owner and the Professional.

5.2.21 Warranty: The warranty provisions of the General Conditions of the Contract shall apply.

5.2.22 Diverse Business Enterprise (DBE Enterprise Program): Develop and implement a system to attain DBE participation. The Owner has set a goal of 15% combined utilization of DBE contractors and suppliers. Track and monitor the DBE participation and submit monthly updates to the Owner. In coordination with the Owner and at the recommendation of the Project Team, conduct an Open House and hold workshops in an effort to increase DBE participation. A DBE Utilization report is required with each monthly certificate of payment, or upon request by the Owner.

5.3.15 LEED: Assist the Professional in reviewing, assembling, and submitting all documentation required for achieving the LEED target certification level that has been established for the project.

### 5.3 Additional Services

Additional services, if requested by the Owner, will be provided by the Construction Manager only upon written agreement between the Owner and Construction Manager defining the extent of such additional services and the amount and manner in which the Construction Manager will be compensated for such additional services.

## ARTICLE 6: OWNER'S RESPONSIBILITIES

6.1 The Owner shall provide full information regarding the Owner's requirements for the Project to the best of the Owner's ability.

6.2 The Owner shall designate a representative who shall be fully acquainted with the Project and has authority to approve revisions to the Project Construction Budgets, approve Change Orders, render decisions promptly and furnish information expeditiously.

6.3 The Owner shall furnish for the site of the Project all necessary surveys describing the physical characteristics, soil reports and subsurface investigations, legal limitations, known utility locations, and a legal description as may be necessary.

6.4 The Owner will furnish to the Construction Manager reproducible Drawings and Specifications necessary for the execution of the Work.

6.5 The Owner shall provide insurance for the Project in accordance with the General Conditions of the Contract.

6.6 If the Owner becomes aware of any fault or defect in the Work or nonconformance with the Drawings and Specifications, the Owner shall give prompt written notice thereof to the Construction Manager. The Construction Manager shall take immediate steps to correct such fault or defect.

6.7 The Owner shall communicate with the Trade Contractors only through the Construction Manager in writing.

## ARTICLE 7: TRADE CONTRACTS

7.1 All portions of the Work that the Construction Manager does not perform with its own forces shall be performed under Trade Contracts. The Construction Manager shall request and receive a minimum of three (3) bids for each prospective Trade Contract. Trade Contracts will be awarded after consultation with the Owner and Professional. Construction Manager shall have the final authority and responsibility for selection of all Trade Contractors, and award of all Trade Contracts.

7.2 The Construction Manager is permitted to use its own forces in the performance of Work of a temporary nature or as approved by Owner.

7.3 All Trade Contracts will be between the Construction Manager and the Trade Contractors unless otherwise directed by the Owner.

7.4 The Construction Manager shall be responsible to the Owner for the acts and omissions of its agents and employees, Trade Contractors performing Work under a contract with the Construction Manager, and such Trade Contractors' agents, Sub-Trade Contractors, suppliers, and employees.

ARTICLE 8: SCHEDULE

The Construction Schedule shall be established in a Change Order to this Agreement subject to adjustment(s) as provided for in the Contract Documents. Specifically, the following Contract Dates (hereafter referred to as "dates") shall be established in a Change Order to this Agreement: (a) Start of Construction, (b) Substantial Completion, and (c) Final Completion. The Owner and the Construction Manager may agree not to initially establish all three(3) such "dates", and in the alternative, to establish one but not the other of the two "dates". The "dates" are subject to adjustments as provided for in the Contract documents.

Construction Manager agrees that time is of the essence for this Agreement.

The Work to be provided under this Contract shall be in accordance with the following schedule:

Start of Construction	<b>T.B.D.</b>
Substantial Completion	<b>T.B.D.</b>
Final Completion (completion of all punch list items, Close-out documents, As-Builts, and Full & Final settlement of costs)	<b>T.B.D.</b>

ARTICLE 9: PRE-CONSTRUCTION SERVICES COMPENSATION AND GUARANTEED MAXIMUM PRICE

9.1 The Construction Manager's compensation for Pre-Construction and Bidding Phase Services is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). At such time as the Owner and Construction Manager agree the drawings and specifications are sufficiently complete, the Construction Manager shall prepare and submit to the Owner in writing a Guaranteed Maximum Price (GMP) proposal, including the cost of all Trade Contracts and all other allowable costs as described in Article 11, the Construction Manager's Fee as described in Article 10, and a total for contingencies. The GMP Proposal shall not include compensation for Pre-Construction Services.

9.2 The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include, but not necessarily be limited to the following:

- A dated list (and description, as applicable) of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal (document listing);
- A list of allowances and a statement of their basis;
- A list of the assumptions and clarifications made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;
- The Date of Substantial Completion and/or the Date of Final Completion upon which the proposed GMP is based, and the detailed Schedule of Work upon which the Date of Substantial Completion or the date of Final Completion is based;



- Trade Contract/Specification Division breakdown;
- CM Staff/Personnel cost summary with a complete breakdown of costs, including a Staff Hourly Billable Rate schedule;
- Reimbursable Cost summary with a complete breakdown of costs;
- A schedule of applicable alternate prices;
- A schedule of applicable unit prices;
- A statement of any work for which the Construction Manager is proposing to self-perform;
- Any other items as requested by Owner.

The Construction Manager shall meet with the Owner and Professional to review the GMP. If the Owner or Professional discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP. The Owner's acceptance of the GMP and its basis shall be set forth in a Change Order to this Agreement. The Guaranteed Maximum Price cannot be increased unless the Scope of the Work is increased with the approval of the Owner.

9.3 If a Guaranteed Maximum Price (GMP) agreement between the Owner and the Construction Manager cannot be reached after completion of the pre-construction phase services, then this Agreement will end, with the remaining balance of the Pre-Construction and Bidding Phase Services fee payable to the Construction Manager. No further compensation would be due to the Construction Manager by the Owner.

9.4 It is further agreed that as Trade Contracts are awarded, the actual amounts shall be substituted for the estimated Trade Contract costs in the Guaranteed Maximum Price estimate. After all trade packages have been bid, if there are buy-out savings, the buy-out savings shall be returned to the Owner by means of deduct change order. If, upon completion of the Work, the actual Cost of the Work as audited and approved by the Owner and Professional, including the Construction Manager's Fee, is less than the Guaranteed Maximum Price as set forth herein and as adjusted by approved Change Orders, \_\_\_\_\_ Percent ( \_\_\_\_\_%) of the remaining funds (savings) shall revert to the Owner.

9.5 If the Construction Manager wishes to make a claim for Additional Services, an increase in the Guaranteed Maximum Price, or an extension in the Contract Time, the Construction Manager shall give the Owner written notice thereof in accordance with the General Conditions of the Contract. This notice shall be given by the Construction Manager before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Guaranteed Maximum Price or the date of Completion of Construction resulting from such claim shall be allowed only if authorized by Change Order.

#### ARTICLE 10: CONSTRUCTION MANAGER'S FEE

In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager as compensation for its services as a Construction Manager a Fee as set forth herein.

##### 10.1 Guaranteed Maximum Price Fee

The Owner's acceptance of the GMP and its basis, including Fee, shall be set forth in a Change Order to this Agreement. This Guaranteed Maximum Price Fee shall be paid monthly, in the same proportion that each monthly payment for the Cost of Work bears to the total Cost of the Work. Any remaining balance of this fee shall be paid at the time of final payment.

##### 10.2 Adjustment in Fee

10.2.1 Changes in the Guaranteed Maximum Price: The Owner's acceptance of the GMP and its basis, including fee, shall be set forth in a Change Order to this Agreement. The Construction Manager shall receive **T.B.D.** Percent ( **T.B.D.** \_\_\_\_\_%) of any increase in Guaranteed Maximum Price as approved by the Owner.

10.2.2 Reconstruction: The Construction Manager shall be paid an additional fee in the same proportion as set forth in 10.2.1 if the Construction Manager is placed in charge of the reconstruction of any insured or uninsured loss.

10.3 Fee Inclusions: Included in the Construction Manager's Fee are the following:

10.3.1 Salaries: Salaries or other compensation of the Construction Manager's employees at the principal office and branch offices, except compensation of employees for services described in Subparagraphs 11.3.1 and 11.3.2.

10.3.2 Operating Expenses: General operating expenses of the Construction Manager's principal and branch offices other than the field office.

10.3.3 Capital Expenses: Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Project.

10.3.4 Overhead: Overhead or general expenses of any kind, except as may be expressly included in Article 11.

10.3.5 Costs of the Work in excess of the Guaranteed Maximum Price which are not paid by a Guaranteed Maximum Price Change Order.

#### ARTICLE 11: COST OF THE WORK

11.1 The term "Cost of the Work" shall mean costs necessarily incurred in the proper performance of the Work and paid by the Construction Manager. Such costs shall include only the allowable items set forth in this Article.

11.2 The Owner agrees to pay the Construction Manager for the Cost of the Work and the Construction Manager's Fee stipulated in Article 10, not to exceed the Guaranteed Maximum Price.

#### 11.3 Allowable Cost Items

11.3.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager.

11.3.2 Salaries of the Construction Manager's employees when stationed only at the field office.

11.3.3 Costs of all employee benefits and taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Construction Manager and included in the Cost of the Work under the Subparagraphs 11.3.1 and 11.3.2.

11.3.4 Reasonable transportation, traveling, moving, and hotel expenses of the Construction Manager or of its officers or employees incurred in discharge of duties connected with the Project.

11.3.5 Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.

11.3.6 Payment made by the Construction Manager to Trade Contractors for their Work performed pursuant to trade contracts under this Agreement.

11.3.7 Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager.

11.3.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and

replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those prevalent in the area.

11.3.9 Cost of the premiums for all insurance which the Construction Manager is required to procure by this Agreement or is deemed necessary by the Construction Manager.

11.3.10 Sales, use, gross receipts or similar taxes related to the Project imposed by any governmental authority, and for which the Construction Manager is liable.

11.3.11 Minor expenses such as telegrams, long-distance telephone service at the site, express mail, and similar petty cash items in connection with the Project.

11.3.12 Cost of removal and disposal of all debris.

11.3.13 Cost incurred due to an emergency affecting the safety of persons and property.

11.3.14 Legal costs reasonably and properly resulting from prosecution of the Work for the Owner.

11.3.15 Cost of Performance and Payment Bonds required.

11.4 Any segment of the Work performed by the Construction Manager and not by Trade Contractors shall be performed at the actual Cost of the Work with no addition for markup or profit above the Construction Manager's fee stipulated herein, except where the Owner and the Construction Manager may agree that the Work may be performed by the Construction Manager's own forces or subsidiaries on a lump-sum basis.

11.5 All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall accrue to the Owner, and the Construction manager shall make provisions so that they can be secured.

## ARTICLE 12: CHANGES IN THE SCOPE OF WORK

12.1 Except as provided in this Article, no oral statement of direction of the Professional or the Owner shall be treated as a Change Order or entitle the Construction Manager to an adjustment to the Guaranteed Maximum Price and/or the date of Completion of Construction.

12.2 The Owner, without invalidating the Contract, may order Changes in the Scope of the Work consisting of additions, deletions or other revisions. The Guaranteed Maximum Price cannot increase without an increase in the Scope of the Work. All such Changes in the Work shall be authorized by Guaranteed Maximum Price Change Order.

12.3 A Guaranteed Maximum Price Change Order is a written order to the Construction Manager, signed by the Owner or the Owner's authorized agent and issued after the execution of the Contract, authorizing a Change in the Scope of Work and an adjustment in the Guaranteed Maximum Price and/or to the date of Completion of Construction. Each adjustment in the Guaranteed Maximum Price resulting from a Guaranteed Maximum Price Change Order shall clearly separate the amount attributable to the Cost of the Work and the Construction Manager's Fee.

12.4 The cost or credit to the Owner resulting from a Change in the Scope of Work shall be determined in accordance with Article 9 of the General Conditions of the Contract.

12.5 If no mutual agreement occurs between the Owner and the Construction Manager as set forth in Section 12.4, the change in the Contract Price, if any, shall then be determined on the basis of the reasonable expenditures or savings of those performing, deleting, or revising the Work attributable to the change. In such case, the Construction Manager shall present in such form and with such content as the Owner requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age, and unemployment insurance, fringe benefits required by agreement or custom, and worker's

compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Construction Manager or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Construction Manager's home office or other non-job site overhead expense be included in any change in the Guaranteed Maximum Price. The cost of such Work shall include in the case of an increase of the Guaranteed Maximum Price, an increase in the Guaranteed Maximum Price Fee as provided in Article 10 herein. When both additions and credits are involved in any one change, the markup for overhead and profit as allowed in Section 12.4 shall be figured on the basis of net increase, if any.

12.6 All Guaranteed Maximum Price Change Order Requests shall be processed in a timely manner and shall be presented to the Owner for approval in a timely manner.

## ARTICLE 13: COST CONTROL

### 13.1 Cost Control

In order to implement the responsibilities noted in other sections of this Agreement, the Construction Manager shall implement a Project Cost Control program in accordance with the provisions of this Article.

13.1.1 Guaranteed Maximum Price Summary: The Construction Manager shall prepare a summary of its Guaranteed Maximum Price, as accepted by the Owner, by individual line items of allowable costs, Construction Manager's Fee, and contingencies. This itemized trade breakdown will be utilized for monthly Applications for Payment and will be updated regularly as actual costs become known.

13.1.2 Contingency: The Contingency represents a single sum of money included in the Guaranteed Maximum Price to protect the accuracy of the Construction Manager's estimate of probable costs. All uses of Contingency must be approved by Owner.

13.1.3 Construction Manager's Use of Contingency: The Construction Manager may use the funds available in the Contingency for any purpose required to provide and complete the Work within the original Guaranteed Maximum Price Scope of Work due the Owner. Adjustments to various Trade Contract items may be made with funds from the Contingency, upon the review and consent of the Owner and Professional provided that the allocation of funds is consistent with this Agreement.

13.1.4 Allocation of Funds to the Contingency: Upon the completion of expenditures of funds from any individual trade contract line item, any savings realized will be transferred to the Contingency.

13.1.5 Accounting Format: A detailed record of activity and current status will be included in each monthly application for payment. The accounting format must be acceptable to the Owner and shall include for each Trade Contract line item such items as are given in the original Guaranteed Maximum Price estimate, authorized changes by Guaranteed Maximum Price Change Order, actual Contract Amount awarded, funds expended to date, and funds anticipated to be expended. The exact nature of this format will be developed by the Construction Manager and the Professional. The General Conditions line-item, as well as the CM Staff Costs line-item, shall be handled as Reimbursable, not-to-exceed amounts. All backup/substantiation of costs shall be included in each monthly Application for Payment.

13.1.6 Identification of Savings: Buy-out savings from the trade packages shall be returned to the Owner by means of a deduct change order.

## ARTICLE 14: METHODS OF PAYMENTS TO THE CONSTRUCTION MANAGER

The Construction Manager shall, between the first and seventh day of each month, submit to the Owner a statement in detail showing the amount of Work performed in the preceding calendar month, according to Article 11 of the General Conditions. Payments shall be made on valuation of Work done based on an approved Schedule of Values to be submitted by the Construction Manager to the Owner through the Professional of the quantities aggregating the total of the Contract, prior to the first application for payment.

The Schedule of Values shall, when approved by the Professional, be used as a basis for determining the percentage of the Contract sum comprising each Certificate of Payment.

Payments shall be made on the basis of 94% of the approved monthly schedule of Work performed as hereinbefore determined. Retainage of at least Six Percent (6%) is to be withheld on all Trade Subcontracts by the Construction Manager as outlined in Article 1 of the General Conditions. Note: For Pre-Construction services, payment shall be monthly by the Owner to the Construction Manager (without retainage) in proportion to the services actually performed.

If the Construction Manager and the Owner cannot agree on the amount of Work performed, the matter shall be referred to the Professional who shall ascertain and certify the amount performed.

#### ARTICLE 15: LIENS/PERFORMANCE BOND

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

Construction Manager shall provide the following performance bond and labor and material payment bond or other performance security:

Upon establishment of the total, final Contract price (less the amount allotted for Pre-construction services), the Construction Manager 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 Construction Manager. 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.

One bond shall be a performance bond covering the faithful performance by the Construction Manager of all covenants and agreements on the part of the Construction Manager contained in this Contract.

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 and any loss due to the failure of the Construction Manager to pay any or all obligations incurred under this Contract.

The Construction Manager shall pay all premiums for all bonds.

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 Construction Manager or Owner shall promptly furnish a copy of the bonds or shall permit a copy to be made.

#### ARTICLE 16: LIQUIDATED DAMAGES

The Construction Manager must agree to begin work contemplated by this contract within ten (10) days after the date specified in the Notice to Proceed as the starting date and to complete the work on or before the "dates" which shall be set forth in Change Order 1. As of the execution of this Agreement, there are no

liquidated damages specified for the project per calendar day for each calendar day of delay, however, the Owner reserves the right to seek actual costs or damages in the event the Construction Manager fails to complete the project as scheduled. The Construction Manager and its surety shall be liable for the amount thereof. Upon establishment of the GMP and the related construction schedule, the following language (or as otherwise approved by the Owner) shall be incorporated into this Agreement via a change order: "The Construction Manager agrees to begin the Work contemplated by this Contract within \_\_\_\_\_ days after notice from the Owner to proceed and to substantially complete the same, ready for the Owner's occupancy and use, on or before \_\_\_\_\_. Construction Manager agrees that time is of the essence of this Contract, and if the Construction Manager shall fail to complete the Work within the time above specified, or such extension or extensions thereof as shall be granted, the Construction Manager shall pay Owner, as liquidated damages and not as a penalty for such failure, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day for each and every calendar day thereafter until such Work shall be substantially completed and ready for the Owner's occupancy and use. Provided, nevertheless, if the Construction Manager is delayed at any time in the progress of the Work by any act or neglect of the Owner or Professional, or if 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 Construction Manager's control, or by delay authorized by the Owner, or by other causes which the Professional determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Professional may determine with the Owner's approval."

#### ARTICLE 17: TERMINATION OF THE AGREEMENT

Termination of the Agreement shall be governed by Section 7.6 of the General Conditions of the Contract.

#### ARTICLE 18: MISCELLANEOUS PROVISIONS

##### 18.1 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.

##### 18.2 Successors and Assigns

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

##### 18.3 Assignment

Neither the Owner nor the Construction Manager shall assign or in any manner transfer any right, duty or obligation under this Agreement.

##### 18.4 Prevailing Wage

This Contract is subject to the Prevailing Wage Act, Act No. 442, August 15, 1961 (P.L. 987), as amended August 9, 1963, Act No. 342. The Construction Manager and all Trade Contractors shall comply with all requirements of this Act. In addition, refer to the General Conditions of the Contract, and the Notification of Contract Requirements Pertaining to the Prevailing Wage Act for additional information. A project-specific Prevailing Minimum Wage Determination shall be set forth in a Change Order to this Agreement.

##### 18.5 Steel Products Procurement Act

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).

##### 18.6 Entire Agreement

This Agreement represents the entire agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by

any provisions of the documents for construction and may be amended only by written instrument signed by both the Owner and the Construction Manager.

#### 18.7 Release of Information

The Construction Manager understands and agrees that the Owner may release to taxing authorities any and all instruments relating to the Work.

#### 18.8 Background Check Policy

The Construction Manager 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>).

#### 18.9 Social Responsibility / Contractor Conduct

- A. Fulfilling the mission of The Pennsylvania State University for those we serve requires the highest standards of integrity, responsibility, and respect, and we encourage our contractors/suppliers to aspire to those same standards, particularly when on campus or engaging with members of the University community. The University has adopted the [Global Sullivan Principles of Social Responsibility](#). We also encourage our contractors/suppliers to adopt and follow these principles.
- B. The University is committed to equal access to programs, facilities, admission and employment for all persons, in an environment free of harassment and free of discrimination. Conduct constituting harassment or discrimination in the University environment, as prohibited in University Policy AD85, is subject to corrective action.

#### 18.10 Public Works Employment Verification Act

As a precondition to the award of the contract for the Work described herein, Construction Manager must complete the Commonwealth of Pennsylvania 'Public Works Employment Verification Form' ("Form") and provide a copy to Owner.

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

- (1) Construction Manager 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) Construction Manager 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](http://www.dgs.state.pa.us), where the Form may be obtained. Construction Manager will further ensure that prior to beginning onsite or offsite work, every subcontractor shall submit a completed Form to the Owner.
- (3) Construction Manager 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) Construction Manager and subcontractors shall cooperate with Owner and Pennsylvania Department of General Services in the event of an audit arising under the Act.

ARTICLE 19: GENERAL CONDITIONS

The General Conditions of the Contract, Articles 1 to 16 inclusive, are a part of this Agreement.

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

**THE PENNSYLVANIA STATE UNIVERSITY**  
OWNER

\_\_\_\_\_  
Title

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

**CONSTRUCTION MANAGER**

\_\_\_\_\_  
Signature

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

Name: \_\_\_\_\_  
(please print name of person signing above)

Title: \_\_\_\_\_  
(please print title of person signing above)

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