



**PennState Health**  
Milton S. Hershey Medical Center

Date: June 9, 2017

Subject: West Campus Parking Garage – Request for Proposal  
Design-Build Contract with Guaranteed Maximum Price (DB w/GMP)  
Penn State Health Milton S. Hershey Medical Center

To: Alexander Building Company  
Clayco  
Donley's  
Massaro Corporation  
PJ Dick  
Quandel  
Turner  
Whiting Turner

Congratulations, your team has been selected as one of the teams on the long list for the design and construction of the above referenced project. The Selection Committee will review responses to this Request for Proposals and identify a short list of three teams to be interviewed.

It is necessary that you provide us with the information requested in the Proposal Submission Requirements no later than noon on July 5, 2017. Please answer all of the questions in the order requested. This will provide uniform information on all firms for evaluation and ultimate presentation to the Board of Trustees. A document not exceeding 26, 8-1/2 x 11, single sided (13 double sided) pages should be more than adequate to provide the requested information. Please submit to my office one PDF copy on a USB drive and 15 hard copies of your proposal. I encourage you to visit the site and discuss the project with representatives of the user group in order to understand our goals and the major issues driving this project. Please contact David Barto, Associate Director of Facilities and Planning at [dbarto@hmc.psu.edu](mailto:dbarto@hmc.psu.edu) or at 717-531-4525 to schedule your site visit and with any programmatic questions. Contact John Bechtel, Assistant Director of Design and Construction, at [jrb115@psu.edu](mailto:jrb115@psu.edu) with and Design/Build process or contract questions. Contact me if you have any campus planning, design or general process questions.

A decision regarding the teams to be interviewed will be made by July 19, 2017 and teams will be interviewed on August 7, 2017. The results will be announced at the Board of Trustees meeting on September 15, 2017 and posted to this website.

Goal

The Penn State Hershey campus is home the Milton S. Hershey Medical Center and the Pennsylvania State University College of Medicine. The university is planning building construction on campus that will increase the demand for vehicle parking. Currently, the campus has approximately 6,400 surface parking spots and approximately 2,700 parking spots within two parking structures. The Penn State Hershey campus intends to construct a new parking structure on the west side of the campus to accommodate the pending growth as well as replace parking lost to building construction. The

University has commissioned Skidmore, Owings & Merrill to develop a building program and feasibility study for a new research and education building. Their study was completed in August of 2016 and included a proposed massing and site location for the west campus parking structure. Applicable portions of that study will be shared with the firms that advance to the short list selection stage and the complete programming documentation will be provided to the successful candidate.

It is anticipated that the parking structure will accommodate approximately 1,100 parking spots. The successful design-build team will verify the capacity based on a traffic and parking study date provided by the University. The goals of the project include the following:

- Increase the overall parking capacity on the campus with an economical parking structure
- Design and construct a parking structure that does not detract from the campus aesthetics, conforms to the site topography and has appropriate massing relative to its location and adjacent buildings
- Provide careful consideration of vehicular and pedestrian traffic flow to maintain a safe campus environment

The total project budget range for the program, including soft costs, is \$30,000,000 to \$40,000,000. We anticipate a construction contract award in September 2017 with a construction start date of February 2018 and substantial completion by the end of 2018.

### **Proposal Submission Requirements**

The following items of information must be supplied to the University. Failure to answer all question will be reason for disqualifying your team from further consideration. The deadline for submission is July 5, 2017 at noon.

1. Briefly outline your project specific Design-Build process and approach. Summarize your team structure and governance as it relates to decision making. Please share any experiences your proposed team members have on projects delivered in a more integrated and lean approach. Be specific with the principals applied M/WBE participation and outreach and their depth of experience with Lean D&C principles (Last Planner, CoS, A3's, etc.) and suggest those you would expect to use for this project. Identify areas for enhanced collaboration between the D-B team and Penn State.
2. Identify and discuss design and construction issues that are the key drivers of this type of project and illustrate these with examples from your previous work. Please identify and discuss specific lessons-learned that you plan to apply to this project from your previous experience (permitting, schedule reduction opportunities, vehicle and pedestrian traffic or any other subjects that are pertinent).
3. Provide the qualifications and experience of the lead design and construction team members, including key consultants, to be assigned to this project being specific about the roles and on-site participation for each. An organization chart is preferred.
4. Please highlight five relevant projects that convey your team's expertise with this type of project and your ability to deliver a Design/Build project. Please include the following information:
  - a. Current contact information for each referenced project# of cars
  - b. Construction cost value
  - c. Design/ delivery method (DBB, CM at Risk, D/B, etc.)



- d. Date of completion
- e. Members of the proposed team and consultants who worked on the project
5. Please provide a proposed design and construction milestone schedule for this project in graphic form allowing three weeks for and necessary Penn State University reviews. Assume that the program validation and design process will start in September 2017 with a desire to complete the project as early as practical. Include a summary of your scheduling processes and techniques. Please describe your understanding of the key schedule drivers for this project.
6. Outline the estimating and cost control methodology you plan to implement on this project. Discuss your experiences and preferences with respect to Shared Savings contracts.
7. Please provide a brief description of your approach to project safety (include your EMR). Does your team plan to use Prevention through Design (PtD) techniques to improve both construction and building operations safety? Feel free to cite examples from previous projects.
8. Please describe your team's experience with Parksmart Green Garage Certifications or other commitments to sustainable design as it pertains to this project.
9. Provide a concise summary narrative as to why your team is the best suited for this project.

The University reserves the right to waive any informality in and or all Proposals, and to reject or accept and Proposal or portion thereof. Additionally, the University may also hold all proposals for up to 45 days and to reject all proposals or to award on the basis of technical merit and the best interest of the University.

Included with this RFP are two attachments:

1. Design-Build Agreement with General Conditions
2. Site plan showing the West Garage location on campus

We appreciate your cooperation and interest in preparing this material. We look forward to working with the selection team and you on the development of this important project.

Sincerely,

Greg Kufner, AIA, NCARB

University Architect  
The Pennsylvania State University  
206 Physical Plant Building, University Park, PA 16802  
Phone: 814 865-4402, Email: [g21@psu.edu](mailto:g21@psu.edu)

cc. Screening Committee, H.F. Stryker

PSU Project Number: XX-XXXXXXXXXX

**ConsensusDocs 410 (Modified)**  
**STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS**  
**BETWEEN OWNER AND DESIGN-BUILDER**  
**(Cost of the Work Plus a Fee with a GMP), v. 10/2016**



**TABLE OF ARTICLES**

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**AGREEMENT**

PSU Project Number: **XX-XXXXXX**

FOR PSU USE ONLY	
BUDGET	
JOB	
REFERENCE	
CODE	

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, by and between the OWNER: **THE PENNSYLVANIA STATE UNIVERSITY**, a state-related institution and instrumentality of the Commonwealth of Pennsylvania subject to the Pennsylvania nonprofit corporation laws, with an office and principal place of business at University Park, Centre County, Pennsylvania, and the DESIGN-BUILDER:

**XXXXXXXXXX**  
**XXXXXXXXXXXXXXXXXXXX**  
**XXXXXXXXXXXX**

Tax identification number (TIN): **XX-XXXXXX**  
Design Professional Licensing No. in the state of the Project: **XXXXXXXX**

for services in connection with the following project:

**(PSU Project name here)**, PSU Project No. **XX-XXXXXX**, located at The Pennsylvania State University, **XXXXXXXXXX** campus location, **XXXXXXXXXX** Township, **XXXXXXX** County, Pennsylvania. ("Project")

Notice to the Parties shall be given at the above addresses. In consideration of the promises set forth herein, and with intent to be legally bound, the parties agree as follows:

**ARTICLE 1 GENERAL PROVISIONS**

1.1 TEAM RELATIONSHIP The Parties each agree to proceed with the Project on the basis of trust, good faith and fair dealing and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the Dates of Substantial Completion and Final Completion if they are established by Amendment 1. The Design-Builder agrees to procure or furnish, as permitted by the Law, the design phase services and construction phase services as set forth below.



1.1.1 The Design-Builder represents that it is an independent contractor with respect to Owner and that it has the necessary expertise and experience required for the undertaking of the Project.

1.1.2 Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Owner unless authorized in writing by the Owner's Representative.

1.1.3 The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoid conflicts of interest and discloses promptly any to the other Party, and (b) warrant that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

1.2 DESIGN-PROFESSIONAL Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, as permitted by the Law. The person or entity providing architectural and engineering services shall be referred to as the Design-Professional. If the Design-Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Design-Professional. The Design-Professional for the Project is:

XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXX

### 1.3 DEFINITIONS

1.3.1 "Agreement" means this modified ConsensusDocs 410 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Cost of the Work Plus a Fee with a GMP), as modified, amendments, exhibits, addenda, and attachments made part of this agreement upon its execution.

1.3.2 The following exhibits are a part of this Agreement:

- Exhibit A: Design-Builder Proposal, dated XXXXXXXXXXXX, 2016 (XX pages, attached)
- Exhibit B: The Pennsylvania State University Design and Construction Standards listing (screen shot from website. 3 pages, attached).
- Exhibit C: Staff Hourly Billable Rates (located within attached D-B Proposal)
- Exhibit D: Project Milestone Schedule (located within attached D-B Proposal)
- Exhibit E: PSU Project Delivery System (v. March 12, 2012. 2 pages, attached).
- Exhibit F: Prevailing Wage Rates (Serial # XX-XXXXX, dated XX/XX/XXX. Incorporated via reference)
- Exhibit G: PSU BIM Addendum (dated March 15, 2012. 6 pages, attached).



1.3.3 “Business Day” means all Days, except weekends and official federal or state holidays where the Project is located.

1.3.4 A “Change Order” (at times referred to as “Amendment”) is a written order signed by the Owner and the Design-Builder after execution of this Agreement, indicating changes in the scope of the Work, Cost of the Work or Contract Time, including substitutions proposed by the Design-Builder and accepted by the Owner.

1.3.5 The “Contract Documents” consist of those documents identified in section 14.1.

1.3.6 The “Contract Time” is the period between the Date of Commencement and Final Completion.

1.3.7 “Cost of the Work” means the costs and discounts specified in ARTICLE 7.

1.3.8 “Day” means calendar day.

1.3.9 “Date of Commencement” is as provided for in section ARTICLE 5.

1.3.10 “Design-Builder's Fee” means the compensation paid to the Design-Builder for salaries and other mandatory or customary compensation of the Design-Builder's employees at its principal and branch offices except employees listed in subsection 7.2.2, general and administrative expenses of the Design-Builder's principal and branch offices other than the field office, and the Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work, and profit. Fee shall not apply to self-performed trade contract Work by the Design-Builder.

1.3.11 “Defective Work” is any portion of the Work not in conformance to the requirements of the Contract Documents.

1.3.12 “Final Completion” occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable.

1.3.13 “Laws” mean federal, Pennsylvania state and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Design-Builder must comply that are enacted as of the Agreement date.

1.3.14 “Material Supplier” is a person or entity retained by the Design-Builder to provide material and equipment for the Work.

1.3.15 “Others” means other contractors and all persons at the Worksite who are not employed by Design-Builder, its Subcontractors or Material Suppliers.

1.3.16 “Overhead” shall mean (a) payroll costs and other compensation of Design-Builder's employees in the Design-Builder's principal and branch offices; (b) general and administrative expenses of the Design-Builder's principal and branch offices including





charges against the Design-Builder for delinquent payments; and (c) the Design-Builder's capital expenses, including interest on capital used for the Work.

1.3.17 The "Owner" is the person or entity identified in the Agreement, and includes the Owner's Representative.

1.3.18 The "Owner's Program" is an initial description of the Owner's objectives that may include, but it not limited to: budget and time criteria; conceptual documents; design criteria; space, price and time requirements and relationships; performance requirements; flexibility and expandability requirements; special equipment and systems; site requirements; and other Project-specific technical materials and requirements.

1.3.19 The "Parties" are collectively the Owner and the Design-Builder.

1.3.20 The "Project," as identified in this Agreement, is the building, facility or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Owner or Others.

1.3.21 A "Subcontractor" is a person or entity retained by the Design-Builder as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design-Professional or any separate contractor employed by the Owner or any separate contractor's subcontractors.

1.3.22 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Design-Builder's obligations are sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and the Design-Builder. The certificate shall state the respective responsibilities of the Owner and the Design-Builder for security, maintenance, heat, utilities, or damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction, within the timeframe, if any, established in Amendment 1 for the date of Final Completion.

1.3.23 "Subsubcontractor" is a party or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform any portion of the Subcontractor's work.

1.3.24 "Terrorism" means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.





1.3.25 The "Work" is comprised of all services to be provide by the Design-Builder in accordance with the Contract Documents, including but not limited to the Design Phase services procured or furnished in accordance with section 2.1, the GMP Proposal provided in accordance with section 2.2, the Construction Phase services provided in accordance with section 2.3, Additional Services that may be provided in section 2.11, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

1.3.26 "Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed.

## **ARTICLE 2 DESIGN-BUILDER'S RESPONSIBILITIES**

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Owner's Program, as such Program may be modified by the Owner during the course of the Work.

Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Professional(s), the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Professional. The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing in the same field of specialty.

The Design-Builder shall exercise reasonable skill and judgment in the performance of its services consistent with the team relationship described in section 1.1, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal.

The Design-Builder and the Owner may establish a fast-track approach to the design and construction services necessary to complete the Project. Such agreement establishing a fast-track approach, if any, and the Schedule of the Work shall be included as an exhibit to this Agreement. In the absence of such agreement, the Parties shall proceed in accordance with sections 2.1 and 2.3 below.

The Design-Builder's inclusion of proprietary specifications (exclusive of those which may be indicated/mandated in The Pennsylvania State University Design and Construction Standards) in any Contract Documents that are produced for the Project shall only be done so with the approval of the Owner.

### **2.1 DESIGN PHASE SERVICES**

2.1.1 PRELIMINARY EVALUATION The Design-Builder shall review the Owner's Program to ascertain the requirements of the Project and shall verify such requirements with the



Owner. The Design-Builder's review shall also provide to the Owner a preliminary evaluation of the site with regard to access, traffic, drainage, parking, building placement and other considerations affecting the building, the environment and energy use, as well as information regarding Laws and requirements. The Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical and other systems for review by the Owner, to determine the most desirable approach on the basis of cost, technology, quality and speed of delivery. The Design-Builder will also review existing test reports but will not undertake any independent testing nor be required to furnish types of information derived from such testing in its Preliminary Evaluation. Based upon its review and verification of the Owner's Program and other relevant information the Design-Builder shall provide a Preliminary Evaluation of the Project's feasibility for the Owner's acceptance. The Design-Builder's Preliminary Evaluation shall specifically identify any deviations from the Owner's Program.

**2.1.2 PRELIMINARY SCHEDULE** The Design-Builder shall prepare a preliminary schedule of the Work. The Owner shall provide written approval of milestone dates established in the preliminary schedule of the Work. The schedule shall show the activities of the Owner, the Design-Professional and the Design-Builder necessary to meet the Owner's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Design-Builder shall recommend corrective action to the Owner in writing.

**2.1.3 PRELIMINARY ESTIMATE** When sufficient Project information has been identified, the Design-Builder shall prepare for the Owner's acceptance a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the Owner's budget, the Design-Builder shall make recommendations to the Owner.

**2.1.4 SCHEMATIC DESIGN DOCUMENTS** The Design-Builder shall submit for the Owner's written approval Schematic Design Documents, based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Projects basic elements, scale, and their relationship to the Worksite. One set of these documents shall be furnished to the Owner. When the Design-Builder submits the Schematic Design Documents the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design-Builder's Preliminary Evaluation, schedule and estimate. The Design-Builder shall update the preliminary schedule and estimate based on the Schematic Design Documents.

**2.1.5 PLANNING PERMITS** The Design-Builder shall obtain and the Owner shall pay for all planning permits necessary for the construction of the Project unless as otherwise agreed to by the Parties.

**2.1.6 DESIGN DEVELOPMENT DOCUMENTS** The Design-Builder shall submit for the Owner's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the



Project including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. One set of these documents shall be furnished to the Owner. When the Design-Builder submits the Design Development Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents. The Design-Builder shall update the schedule and estimate based on the Design Development Documents.

**2.1.7 CONSTRUCTION DOCUMENTS** The Design-Builder shall submit for the Owner's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon Laws enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Owner prior to commencement of construction. If a GMP has not been established, the Design-Builder shall prepare a further update of the schedule and estimate based on the Construction Documents.

#### **2.1.8 BIDDING AND AWARD OF TRADE CONTRACTS**

**2.1.8.1** All Work to be performed by Trade Contractors will be competitively procured. The Project Team will determine which trade packages will require prequalification by the Design-Builder. Design-Builder shall prequalify all bidders per established process approved by the Project Team. Review all bidders lists with Owner for approval before proceeding. Procurement of all trade packages shall be coordinated directly with The Pennsylvania State University Office of Physical Plant.

The following trade Categories of work, whether performed by Subcontractors bidding directly to the Design-Builder or if self-performed by the Design-Builder, require Pennsylvania State University prequalification:

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

**2.1.8.2** 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.

**2.1.8.3** Prepare bid analyses, and review bids with the Owner. Award Contracts. Design-Builder shall have final authority and responsibility for selection of all Trade Contractors, and award of all Trade Contracts. Design-Builder hereby specifically agrees to indemnify, defend and hold harmless the Owner and Owner's agents, employees, trustees and attorneys for any and all loss, damage, cost, charge, award,

verdict, judgment, liability or expense, including without limitation, reasonable attorneys' fees, arising out of any claim, actions or suits which are based upon or in any way related to the process of selecting Trade Contractors or the award of Trade Contracts for the project

2.1.8.4 The Design-Builder is permitted to use its own forces in the performance of Work of a temporary nature or as otherwise approved by the Owner.

## 2.1.9 OWNERSHIP OF DOCUMENTS

2.1.9.1 OWNERSHIP OF TANGIBLE DOCUMENTS The Owner shall receive ownership of the property rights of all documents, drawings, specifications, electronic data and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design-Professional, Subcontractors or consultants and distributed to the Owner for this Project, upon the making of final payment to the Design-Builder or, in the event of termination under ARTICLE 11, upon payment for all sums due to Design-Builder pursuant to ARTICLE 9.

2.1.9.2 COPYRIGHT The Parties agree that the Owner shall obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by the subsection above.

2.1.9.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under this section, provided payment has been made pursuant to subsection 2.1.9.1.

2.1.9.4 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Owner may reuse, reproduce or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. The Owner's use of the Documents without the Design-Builder's involvement or on other projects is at the Owner's sole risk, except for the Design-Builder's indemnification obligations, and the Owner shall indemnify and hold harmless the Design-Builder, its Design-Professional, Subcontractors and consultants, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

2.1.9.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where the Design-Builder has transferred its copyright interest in the Documents under subsection 2.1.9, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

2.1.9.6 The Design-Builder shall obtain from its Design-Professional, Subcontractors and consultants rights and rights of use that correspond to the rights given by the



Design-Builder to the Owner in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

## 2.2 GUARANTEED MAXIMUM PRICE (GMP)

2.2.1 GMP PROPOSAL At such time as the Owner and the Design-Builder jointly agree, the Design-Builder shall submit a GMP Proposal in a format acceptable to the Owner. Unless the Parties mutually agree otherwise, the GMP shall be the sum of the estimated Cost of the Work as defined in ARTICLE 7 and the Design-Builder's Fee as defined in ARTICLE 6. The GMP is subject to modification as provided in ARTICLE 8. The Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as may be adjusted in accordance with this Agreement.

2.2.1.1 If the Design-Build documents are not complete at the time the GMP Proposal is submitted to the Owner, the Design-Builder shall provide in the GMP for further development of the Design-Build Documents consistent with the Owner's Program. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which if required, shall be incorporated by Change Order.

2.2.2 BASIS OF GUARANTEED MAXIMUM PRICE The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

2.2.2.1 A list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

2.2.2.2 A list of allowances and a statement of their basis;

2.2.2.3 A list of the assumptions and clarifications made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

2.2.2.4 the Date of Substantial Completion and the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion and the Date of Final Completion is based;

2.2.2.5 A schedule of applicable alternate prices; a GMP Cost Summary;

2.2.2.6 A schedule of applicable unit prices; a GMP Detailed Estimate;

2.2.2.7 A statement of Additional Services (as defined at Article 2.11) included, if any;

2.2.2.8 The time limit for acceptance of the GMP proposal; a Site Utilization Plan;

2.2.2.9 The Design-Builder's contingency as provided in subsection 2.2.7; Design-Builder's Staff Cost Summary;





2.2.2.10 A statement of any work to be self-performed by the Design-Builder; and

2.2.2.11 A statement identifying all patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work that are likely to require the payment of royalties or license fees.

2.2.2.12 Costs within the General Conditions/General Requirements cost-category, as well as the Design-Builder Staffing cost-category, shall be handled as Reimbursable, not-to-exceed amounts. All backup/substantiation of such costs shall be included in each monthly Application for Payment.

2.2.3 REVIEW AND ADJUSTMENT TO GMP PROPOSAL The Design-Builder shall meet with the Owner to review the GMP Proposal. If the Owner has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to the Design-Builder, who shall make appropriate adjustments to the GMP, its basis or both.

2.2.4 ACCEPTANCE OF GMP PROPOSAL Upon acceptance by the Owner of the GMP Proposal, the GMP and its basis shall be set forth in an Amendment.

2.2.5 FAILURE TO ACCEPT THE GMP PROPOSAL Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Design-Builder, the GMP Proposal shall not be effective. If the Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, the Owner shall have the right to:

2.2.5.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted in accordance with subsection 2.2.4;

2.2.5.2 Direct the Design-Builder to proceed on the basis of reimbursement as provided in ARTICLE 6 and ARTICLE 7 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

2.2.5.3 Terminate the Agreement for convenience. In the absence of a GMP the Parties may establish a Date of Substantial Completion and a Date of Final Completion.

2.2.5.4 Direct the Design-Builder, without additional charge to the Owner, to revise and modify the Contract Documents as necessary to achieve compliance with the construction budget established by the Parties.

2.2.6 PRE-GMP WORK Prior to the Owner's acceptance of the GMP Proposal, the Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the Owner may specifically authorize in writing.



2.2.7 DESIGN-BUILDER'S CONTINGENCY The GMP Proposal will contain, as part of the estimated Cost of the Work, the Design-Builder's Contingency, a sum mutually agreed upon and monitored by the Design-Builder and the Owner to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. The Owner acknowledges that the estimating process is not exact and the Design-Builder's contingency is intended to cover inaccuracies in the quantities and prices in the estimate, and unanticipated items which may not have been taken into account in the establishment of the GMP, including, but not limited to, (a) unfavorable bidding from trade contractors due to market conditions, price increases, lack of competition and other variables; (b) default by the Design-Builder's subcontractors or suppliers; (c) costs of corrective work not provided for elsewhere; (d) labor disputes; and (e) other conditions which result in an increase in the Cost of the Work, without increasing the GMP. The Design-Builder's Construction Contingency shall *not* be used to cover: changes to the work; design revisions or problems; interference of the Owner, Professional or third parties for which the Design-Builder is not responsible; matters related to land use proceedings; allowance adjustments; unusually severe weather; or items for which the Design-Builder is not responsible.

The Design-Builder may use the funds available in the Construction 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 Construction Contingency. The Design-Builder shall provide prior notification for all uses of Construction Contingency in excess of \$XXXXXX and a report itemizing all Construction Contingency usage, including required backup based upon the cost of the Work provisions in ARTICLE 7, for the prior month shall be provided for review by the Owner prior to submitting each monthly application for payment.

2.2.8 COST REPORTING The Design-Builder shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Design-Builder shall maintain a complete set of all books and records prepared or used by the Design-Builder with respect to the Project. The Design-Builder's records supporting its performance and billings under this Agreement shall be current, complete and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded reasonable access during normal business hours to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law. Please refer to Right to Audit provisions in Article 13.

## 2.3 CONSTRUCTION PHASE SERVICES

2.3.1 The Construction Phase will commence upon the issuance by the Owner of a written notice to proceed with construction. If construction commences prior to execution of the relevant Amendment, the Design-Builder shall prepare for the Owner's written approval a list of the documents that are applicable to the part of the Work which the Owner has authorized, which list shall be included in the Owner's written notice to proceed.





2.3.2 In order to complete the Work, the Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

2.3.3 COMPLIANCE WITH LAWS The Design-Builder shall give all notices and comply with all Laws at its own costs. The Design-Builder shall be liable to the Owner for all loss, cost and expense, attributable to any acts or omissions by the Design-Builder, its employees, Subcontractors, and agents resulting from the failure to comply with Laws, including, fines, penalties or corrective measures. However, liability under this subsection shall not apply if notice to the Owner was given, and advance approval by appropriate authorities, including the Owner, is received.

2.3.3.1 CHANGES IN LAW In the event of any changes in Laws, including taxes, which were not reasonably anticipated and then enacted after either the date of this Agreement or the date a GMP Proposal is accepted by the Owner and set forth in an Amendment to this Agreement, whichever occurs later, the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, shall be equitably adjusted by Amendment.

2.3.4 The Design-Builder shall obtain and the Owner shall pay for the building permits necessary for the construction of the Project unless otherwise agreed to by the Parties.

2.3.5 The Design-Builder shall provide periodic written reports to the Owner on the progress of the Work in such detail as is required by the Owner and as agreed to by the Owner and the Design-Builder.

2.3.6 The Design-Builder shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the Owner at mutually agreeable intervals.

2.3.7 The Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

The Design-Builder shall prepare and submit to the Owner, within 30 days after substantial completion, a full set of as-built drawings, compatible with the Owner's CADD system, which shall become the record drawings for the Project. The as-built drawings shall generally document how the various elements of the Work, including changes, were actually constructed or installed.



2.4 SCHEDULE OF THE WORK The Design-Builder shall prepare and submit a schedule of work for the Owner's acceptance and written approval as to milestone dates. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from the Owner. The schedule shall be revised as required by the conditions of the Work.

## 2.5 SAFETY OF PERSONS AND PROPERTY

2.5.1 SAFETY PRECAUTIONS AND PROGRAMS The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

Design-Builder and each Trade Contractor shall be 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://opp.psu.edu/planning-construction/design\\_and\\_construction\\_standards/documents/csr-2015-august](http://opp.psu.edu/planning-construction/design_and_construction_standards/documents/csr-2015-august)

2.5.2 The Design-Builder shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

2.5.2.1 its employees and other persons at the Worksite;

2.5.2.2 materials, supplies and equipment stored at the Worksite for use in performance of the Work; and

2.5.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

2.5.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the Owner, the designated safety representative shall be the Design-Builder's project superintendent. The Design-Builder will report promptly in writing all recordable accidents and injuries occurring at the Worksite to the Owner. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Owner.

2.5.4 The Design-Builder shall provide the Owner with copies of all notices required of the Design-Builder by Law. The Design-Builder's safety program shall comply with the



requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

2.5.5 Damage or loss not insured under property insurance that arises from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Owner or Others and not to the Design-Builder shall be promptly remedied by the Owner.

2.5.6 If the Owner reasonably deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Design-Builder's safety program or compliance with same, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Design-Builder does not adopt corrective measures, the Owner may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in ARTICLE 7. The Design-Builder agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion based on the Design-Builder's compliance with the Owner's reasonable request.

2.6 EMERGENCIES In any emergency affecting the safety of persons or property, the Design-Builder shall act in a reasonable manner to prevent threatened damage, injury or loss. Any change in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, on account of emergency work shall be determined as provided for in ARTICLE 8.

## 2.7 HAZARDOUS MATERIALS

2.7.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up. The Design-Builder shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate governmental agency.

2.7.2 After commencing the Work, if Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall promptly report the condition to the Owner and, if required, the governmental agency with jurisdiction.

2.7.3 Prior to removal or mitigation, the Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.



2.7.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work of the Design-Builder. The Design-Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

2.7.5 If the Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the GMP, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion.

2.7.6 To the extent permitted under section 5.5 and to the extent not caused by the negligent acts or omissions of the Design-Builder, its Subcontractors, Material Suppliers and Sub-subcontractors, and the agents, officers, directors and employees of each of them, the Owner shall defend, indemnify and hold harmless the Design-Builder, its Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against all claims, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees, costs and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Material at the Site.

2.7.7 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the Owner or Others, shall be maintained at the Project by the Design-Builder and made available to the Owner and Subcontractors.

2.7.8 During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Certificate of Substantial Completion, the Owner shall be responsible under this section for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.

2.7.9 Section 2.6 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

## 2.8 WARRANTY

2.8.1 The Design-Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work or of a designated portion.

2.8.2 To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of



the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. To the extent products, equipment, systems or materials incorporated in the Work are specified by the Owner but purchased by the Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the Owner in pursuing warranty claims. Nothing in this section is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth herein or in the Contract Documents

2.8.3 The Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to the Owner.

2.8.4 The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Owner in a format directed by the Owner.

2.8.5 With the assistance of the Owner's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

## 2.9 CORRECTION OF WORK WITHIN ONE YEAR

2.9.1 If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, any Defective Work is found, the Owner shall promptly notify the Design-Builder in writing. Unless the Owner provides written acceptance of the condition, the Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner actually discovers and does not notify the Design-Builder or give the Design-Builder an opportunity to test or correct Defective Work as reasonably requested by the Design-Builder, the Owner waives the Design-Builder's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

2.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Design-Builder.

2.9.3 If the Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due the Design-Builder. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.





2.9.4 The Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall, unless the Defective Work requires emergency correction, notify the Design-Builder and allow the Design-Builder an opportunity to correct the Work if the Design-Builder elects to do so. If the Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Design-Builder does not elect to correct the Work, the Owner may have the Work corrected by itself or Others, and, if the Owner intends to seek recovery of those costs from the Design-Builder, the Owner shall promptly provide the Design-Builder with an accounting of correction costs it incurs.

2.9.5 If the Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

2.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Design-Builder's obligations under the Contract Documents.

2.9.7 Prior to final payment, at the Owner's option and with the Design-Builder's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

2.10 CONFIDENTIALITY Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the Design-Builder shall treat as confidential and not disclose to third-persons, except Subcontractors, Subsubcontractors and the Design-Professional as is necessary for the performance of the Work, or use for its own benefit any of the Owner's developments, confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Owner shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Design-Builder shall each specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, the Design-Builder or Owner, as the case may be, shall promptly notify the other party to permit that party's legal objection, if necessary. Disclosures required by Owner pursuant to Law, including but not limited to Pennsylvania's Right to Know Law, shall not require advance notice to, nor approval by Design-Builder.

2.11 ADDITIONAL SERVICES The Design-Builder shall provide or procure the following Additional Services upon the request of the Owner. A written agreement between the Owner and the Design-Builder shall define the extent of such Additional Services before they are performed by the Design-Builder. If a GMP has been established for the Work or any portion



of the Work, such Additional Services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in an Amendment.

2.11.1 Development of the Owner's Program, establishing the Project budget, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

2.11.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

2.11.3 Surveys, site evaluations, legal descriptions and aerial photographs.

2.11.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.

2.11.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

2.11.6 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

2.11.7 Investigation or making measured drawings of existing conditions or the reasonably required verification of the Owner-provided drawings and information.

2.11.8 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.

2.11.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work.

2.11.10 Interior design and related services, including procurement and placement of furniture, furnishings, artwork and decorations.

2.11.11 Making revisions to the Schematic Design, Design Development, Construction Documents or documents forming the basis of the GMP after they have been approved by the Owner, and which are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, Material Suppliers, Subsubcontractors or the Design-Professional.

2.11.12 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the Owner, including but not limited to telephone systems, computer wiring networks, sound





systems, alarms, security systems and other specialty systems which are not a part of the Work.

2.11.13 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence or failure to comply with the Contract Documents of the Design-Builder, or any Subcontractor or Subsubcontractor

2.11.14 The premium portion of overtime work ordered by the Owner, including productivity impact costs, other than that required by the Design-Builder to maintain the Schedule of Work.

2.11.15 Out-of-town travel by the Design-Professional in connection with the Work, except between the Design-Professional's office, the Design-Builder's office, the Owner's office and the Worksite.

2.11.16 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start-up.

2.11.17 Services for tenant or rental spaces not a part of this Agreement.

2.11.18 Services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

2.11.19 Serving or preparing to serve as an expert consultant or witness in connection with any proceeding, legal or otherwise, regarding the Project; provided, however, that Design-Builder shall provide such services free of charge in the event that the proceeding in question arose from, or is alleged to have arisen from, in whole in part, any action or inaction of Design-Builder.

2.11.20 Document reproduction exceeding the limits provided for in this Agreement.

2.11.21 Providing services relating to Hazardous Material discovered at the Worksite.

2.11.22 Other services as agreed to by the Parties and identified in an attached exhibit.

2.12 DESIGN-BUILDER'S REPRESENTATIVE The Design-Builder shall designate a person who shall be the Design-Builder's representative. The Design-Builder's Representative is **XXXXXXXXXX**.

## ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES PROVIDED BY OWNER Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.



3.2 FINANCIAL INFORMATION At Design-Builder's request, the Owner shall provide the Design-Builder evidence of Project financing.

3.3 WORKSITE INFORMATION To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, and to the extent relevant to the Work, the Owner shall provide at the Owner's expense and with reasonable promptness:

3.3.1 information describing the physical characteristics of the site, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations; Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Design-Builder in laying out the Work.

3.3.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by Law; and

3.3.3 any other information or services requested in writing by the Design-Builder which are required for the Design-Builder's performance of the Work and under the Owner's control.

### 3.4 RESPONSIBILITIES DURING DESIGN PHASE

3.4.1 The Owner shall provide the Owner's Program at the inception of the Design Phase and shall review and timely approve in writing schedules, estimates, Preliminary Estimate, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase, and the GMP Proposal.

### 3.5 RESPONSIBILITIES DURING CONSTRUCTION PHASE

3.5.1 The Owner shall review the Schedule of the Work as and timely approve the milestone dates set forth.

3.5.2 If the Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Design-Builder. The failure of the Owner to give such notice shall not relieve the Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

3.5.3 The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Design-Professional.



3.5.4 The Owner shall provide insurance for the Project as provided in ARTICLE 15.

3.6 OWNER'S REPRESENTATIVE The Owner's Representative is XXXXXXXXXX. The Owner's representative shall: (a) be fully acquainted with the Project; (b) agree to furnish the information and services required of the Owner in a timely manner; and (c) have the authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Design-Builder in writing in advance.

3.7 TAX EXEMPTION If in accordance with the Owner's direction the Design-Builder claims an exemption for taxes, the Owner shall indemnify and hold the Design-Builder harmless for all liability, penalty, interest, fine, tax assessment, attorneys' fees or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Owner's direction.

3.8 ELECTRONIC DOCUMENTS If the Owner requires that the Owner and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and the Design-Builder shall agree on a written protocol governing all exchanges in a separate addenda, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and services; (d) acceptable formats, transmission methods and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

## ARTICLE 4 SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Design-Professional. Self-performed work must be agreed to, in writing, by the Parties.

4.1 RETAINING SUBCONTRACTORS Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. All trade contractors must be prequalified for the project by the Design-Builder. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. All subcontracts must be competitively procured. Procurement of subcontracts must be coordinated directly with The Pennsylvania State University Office of Physical Plant.

Subcontracts: Subcontracts will be awarded after consultation with the Owner. Design-Builder shall have final authority and responsibility for selection of all Subcontractors and award of all Subcontracts.



Design-Builder hereby specifically agrees to indemnify, defend and hold harmless the Owner and Owner's agents, employees, trustees and attorneys for any and all loss, damage, cost, charge, award, verdict, judgment, liability or expense, including without limitation, reasonable attorneys' fees, arising out of any claim, actions or suits which are based upon or in any way related to the process of selecting Subcontractors or the award of Subcontracts for the project.

The Design-Builder agrees to bind every Subcontractor, and every Subcontractor agrees to be bound, by the terms of the Agreement and the Contract Documents insofar as they are applicable to the Subcontractor's respective portion of the Work. The Design-Builder shall indemnify the Owner for any Subcontractor's claim which may result from the failure of the Design-Builder to incorporate the provisions of this Contract, in the Design-Builder's agreements with any of its Subcontractors.

The Design-Builder shall indemnify the Owner for any Subcontractor's claim which may arise out of an inconsistency between the Contract Documents and a Subcontract. Subcontracts entered into between the Design-Builder and Subcontractors shall not be inconsistent with the obligations of the Design-Builder under the Contract Documents.

**4.2 MANAGEMENT OF SUBCONTRACTORS** The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.

#### **4.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT**

4.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Design-Builder to the Owner, subject to the prior rights of any surety, provided that:

4.3.1.1 this Agreement is terminated by the Owner pursuant to sections 11.1.3 or 11.2; and

4.3.1.2 the Owner accepts such assignment, after termination by notifying the Subcontractor and the Design-Builder in writing, and assumes all rights and obligations of the Design-Builder pursuant to each subcontract agreement.

4.3.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

**4.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS** The Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subsubcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors' or Material Suppliers' portions of the Work.

**4.5** The Parties have executed a Waiver of Liens / Stipulation Against Liens Agreement, and Design-Builder has purchased (or will have, at the the time that the GMP is established) 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 (as used in this paragraph, "Subcontractors" includes "Subsubcontractors") and Material Suppliers. Design-Builder hereby



specifically waives all lien rights of Subcontractors and Material Suppliers, per the Pennsylvania Mechanics' Lien Law of 1963, as amended. Design-Builder 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 Worksite, or any grounds or curtilages appurtenant thereto, or any other structure or property owned by the Owner, either by Design-Builder or any Subcontractor or Material Supplier, for or on account of any work, labor or materials supplied by any Subcontractor or Material Supplier in the performance of this Agreement, or under any supplemental contract for extra work, in the erection, construction or completion of the improvements to the Project or the Worksite. Nothing herein may be construed as agreement or admission by Owner that a lien filed on or against property of Owner, a State-Related Institution and Instrumentality of the Commonwealth of Pennsylvania, is valid or permissible under any circumstances per Pennsylvania law.

## ARTICLE 5 TIME

5.1 DATE OF COMMENCEMENT The Date of Commencement is the date of the Agreement unless otherwise set forth below:

The Work shall proceed in general accordance with the approved schedule of Work as such schedule may be amended from time to time, subject, however, to other provisions of this Agreement.

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

Start of Construction:	XXXXXXXXXX
Substantial Completion:	XXXXXXXXXX
Final Completion:	XXXXXXXXXX

5.2 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in an Amendment to this Agreement subject to adjustments as provided for in the Contract Documents. The Owner and the Design-Builder may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as a GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in an Amendment. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in an Amendment.

5.2.1 The deadlines for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

5.2.2 Time is of the essence for this Agreement and the Contract Documents.



5.2.3 Unless instructed by the Owner in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance to be provided by the Design-Builder or the Owner as required by the Contract Documents.

### 5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Design-Builder, the Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of the Design-Builder include, but are not limited to, the following: (a) acts or omissions of the Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials unanticipated by the Design-Builder, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under section ARTICLE 11; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) severe and extreme adverse weather conditions not reasonably anticipated. The Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 8.

5.3.2 Delays caused by failure of performance by Subcontractors, Subsubcontractors, or Material Suppliers shall not be grounds for any extension of the Date of Substantial Completion nor any equitable adjustment to the GMP.

5.3.3 In addition, if the Design-Builder incurs additional costs as a result of a delay that is caused by items (a) through (m) immediately above, the Design-Builder shall be entitled to an equitable adjustment in the GMP subject to section 5.5.

5.3.4 If delays to the Project are encountered for any reason, the Parties agree to take reasonable steps to mitigate the effect of such delays.

### 5.4 LIQUIDATED DAMAGES

5.4.1 SUBSTANTIAL COMPLETION The Owner and the Design-Builder agree that this Agreement shall not provide for the imposition of liquidated damages at this time and **will/may** be determined at a later date by the Parties.

5.4.1.1 The Design-Builder understands that if the Date of Substantial Completion established by an Amendment, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Substantial Completion is not attained, the Design-Builder shall pay the Owner TBD dollars (\$TBD) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated





damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion. If Liquidated Damages are not established or otherwise addressed by the Parties, the Owner reserves the right to assess Actual Damages incurred.

5.4.2 FINAL COMPLETION The Owner and the Design-Builder agree that this Agreement shall not provide for the imposition of liquidated damages based on the Date of Final Completion at this time.

5.4.3 The Design-Builder understands that if the Date of Final Completion established by an Amendment is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Final Completion is not attained, the Design-Builder shall pay the Owner TBD dollars (\$TBD) as liquidated damages for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

5.4.4 OTHER LIQUIDATED DAMAGES The Owner and the Design-Builder may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

5.5 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in section 5.4 and excluding losses covered by insurance required by the Contract Documents, the Owner and the Design-Builder agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination.

5.5.1 The Owner and the Design-Builder shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

## ARTICLE 6 COMPENSATION

### 6.1 DESIGN PHASE COMPENSATION

6.1.1 To the extent required by Law, the cost of services performed directly by the Design-Professional is computed separately and is independent from the Design-Builder's





compensation for work or services performed directly by the Design-Builder; these costs shall be shown as separate items on applications for payment. If any Design-Professional is retained by the Design-Builder, the payments to the Design-Professional shall be as detailed in a separate agreement between the Design-Builder and the Design-Professional.

6.1.2 The Owner shall compensate the Design-Builder for services performed during the Design Phase, including pre-construction services and preparation of a GMP Proposal, if applicable, as follows: the sum of **XX** Dollars (\$ **XXXXXXXX**).

6.1.3 Compensation for Design Phase services, as part of the Work, shall include the Design-Builder's Fee, paid in proportion to the services performed, subject to adjustment.

6.1.4 Within fifteen (15) Days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within forty-five (45) Days after accepting such application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount then, within fifteen (15) Days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

## 6.2 CONSTRUCTION PHASE COMPENSATION

6.2.1 The Owner shall compensate the Design-Builder for Work performed following the commencement of the Construction Phase on the following basis:

6.2.1.1 the Cost of the Work as allowed in ARTICLE 7; and

6.2.1.2 the Design-Builder's Fee paid in proportion to the services performed subject to adjustment.

6.2.2 The compensation to be paid under this section, ARTICLE 6.2 and ARTICLE 6.3, shall be limited to, and shall not exceed, the GMP established in the GMP Amendment, except to the extent that the GMP may be adjusted under ARTICLE 8.

6.2.3 Payment for Construction Phase services shall be as set forth in ARTICLE 9. If Design Phase services continue to be provided after construction has commenced, the Design-Builder shall continue to be compensated as provided in ARTICLE 6, or as mutually agreed.

6.3 DESIGN-BUILDER'S FEE The Design-Builder's Fee Percentage shall be as follows:

The Design-Builder's Fee Percentage shall be **XXXXXXXX** percent (**XX**%).



6.3.1 Markups for Changes: If the GMP requires an adjustment due to changes in the Work, the Design-Builder shall receive the 'Design-Builder's Fee Percentage' of any increase in the GMP as approved by the Owner. Note: Fee shall not apply to self-performed trade contract Work by the Design-Builder.

#### 6.4 REIMBURSABLE EXPENSES FOR THE DESIGN-BUILDER'S DESIGN PHASE AND ALL DESIGN-PROFESSIONAL SERVICES

Reimbursable expenses for the Design-Builder's Design Phase and all Design-Professional services are in addition to compensation for basic and additional services and include those project specific expenses as follows for which the Design-Builder and Design-Professional shall be reimbursed on a not-to-exceed basis for their direct "out-of-pocket" costs (no mark-up allowed on reimbursable expenses by the Design-Professional or related consultants). Reimbursable expenses shall be submitted with supporting documentation, which shall include detailed, itemized receipts. When requested and authorized by the Owner, the following shall be reimbursable:

6.4.1 Any necessary fee or permit payment required and paid to any governing body or authority having jurisdiction over the Project.

6.4.2 Expense of printing and reproductions, framed renderings, physical models and mock-ups, and professional photography for the use of the Owner or Owner approved third parties.

6.4.3 Postage and shipping costs for project material sent or returned to the Owner or Owner approved third parties.

6.4.4 Travel, meals, and lodging expenses for the purpose of Owner meetings or Owner approved meetings with third parties, limited to individuals under the direct employ of the Design-Builder or Design-Professional or their subconsultants and working on the Project. Air travel expenses shall be approved in advance by the Owner. Maximum individual per diem expenses related to travel shall be based on the Owner's allowable per diem for meals and lodging for that location. Alcohol is not reimbursable. Design-Builder and Design-Professional shall use the Owner's hotels when feasible.

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

6.4.6 Other project specific expenses requested and authorized by the Owner.

## ARTICLE 7 COST OF THE WORK



The Owner agrees to pay the Design-Builder for the Cost of the Work as defined in this article. This payment shall be in addition to the Design-Builder's Fee stipulated in section 6.3.

## 7.1 COST ITEMS FOR DESIGN PHASE SERVICES

7.1.1 Compensation for Design Phase services as provided in section ARTICLE 6.

## 7.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

7.2.1 Wages paid for labor in the direct employ of the Design-Builder in the performance of the Work, or under a salary or wage schedule agreed upon by the Owner and the Design-Builder.

7.2.2 Salaries of the Design-Builder's employees when stationed at the field office (or as otherwise approved by the Owner). The rate specified for team members assigned full-time to the project shall be applied for 2080 hours per year, maximum. Billable hours for assigned staff beyond an 8-hour day, or beyond forty(40) hours per week, will not be reimbursed.

7.2.3 Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Design-Builder's standard personnel policy, insofar as such costs are paid to employees of the Design-Builder who are included in the Cost of the Work under subsections 7.2.1 and 7.2.2.

Design-Builder may charge to Owner wages paid by Design-Builder to full time employees for paid leave during the duration of the Project, provided that: (1) the employee is assigned by Design-Builder to devote full time hours to the Project; and (2) the employee is granted paid leave by Design-Builder for reasons of vacation, holidays, illness or vacation time (sometimes referred to as Paid Time Off and abbreviated "P.T.O."), pursuant to Design-Builder's regular paid leave policy. For purposes of this section, an employee of Design-Builder shall be considered to be full time if he or she is designated as full time under Design-Builder's personnel policies, but in no event shall an employee be considered to be full time unless he or she is assigned to work at least 35 hours per week to the Project. In no event shall Owner be charged for more than twenty(20) days of paid leave for a given employee during any twelve(12) month period (prorated to match project duration, as appropriate). Establishment of those individuals/positions considered to be full time staff must be agreed to in writing by Owner and Design-Builder prior to issuance of the GMP amendment/change order.

7.2.4 Reasonable transportation, travel, hotel and moving expenses of the Design-Builder's personnel incurred in connection with the Work.

7.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage and handling.



7.2.6 Payments made by the Design-Builder to Subcontractors for work performed under this Agreement.

7.2.7 Fees and expenses for design services procured or furnished by the Design-Builder except as provided by the Design-Professional and compensated in ARTICLE 6.

7.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Design-Builder.

7.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Design-Builder or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third-parties shall be reimbursed at actual cost. Rentals from the Design-Builder or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

7.2.10 Cost of the premiums for all insurance and surety bonds which the Design-Builder is required to procure or deems necessary, and approved by the Owner, including any additional premium incurred as a result of any increase in the GMP, under the terms of Article 15.

7.2.11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design-Builder is liable.

7.2.12 Permits, fees, licenses, tests, and royalties.

7.2.13 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work or redesign during the Construction Phase and for a one-year period following the Date of Substantial Completion, provided that such corrective work or redesign did not arise from the Design-Builder's negligence.

7.2.14 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

7.2.15 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing services, postage, express delivery charges, data transmission, telephone service, and computer-related costs, to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

7.2.16 All water, power and fuel costs necessary for the Work.

7.2.17 Cost of removal of all non-hazardous substances, debris and waste materials unless otherwise agreed to by the Parties.



7.2.18 Costs incurred due to an emergency affecting the safety of persons or property.

7.2.19 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Design-Builder, reasonably and properly resulting from the Design-Builder's performance of the Work.

7.2.20 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Design-Builder's Fee as set forth in ARTICLE 6, which are reasonably inferable from the Contract Documents.

7.3 DISCOUNTS All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Design-Builder, all cash discounts shall accrue to the Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

## ARTICLE 8 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order, Interim Directed Change, or a minor change in the work, subject to the limitations stated in the Contract Documents.

### 8.1 CHANGE ORDER

8.1.1 The Design-Builder may request or the Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions to the GMP or the estimated cost of the work, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion being adjusted accordingly. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article.

8.1.2 Each adjustment in the GMP or estimated Cost of the Work resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase services, other Cost of the Work and the Design-Builder's Fee, with the Design-Builder's Fee not to exceed **XXXXX** percent (**XXX%**).

8.1.3 The Owner and the Design-Builder shall negotiate an appropriate adjustment to the GMP or the estimated Cost of the Work, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the GMP, the estimated Cost of the Work, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.



8.1.4 NO OBLIGATION TO PERFORM The Design-Builder shall not be obligated to perform changes in the Work that impacts the GMP or the estimated Cost of the Work, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion until a Change Order has been executed or written Interim Directed Change has been issued.

8.1.5 EFFECT OF AN EXECUTED CHANGE ORDER The Design-Builder, by accepting a Change Order, waives and forever releases, and shall be conclusively barred from asserting, 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. Any attempt by Design-Builder to preserve any claims relating to or arising out of or resulting from the Work that is the subject of the Change Order, including assertion of the underlying facts as the basis for any sort of claim sounding in delay or lost productivity, shall be disregarded and shall not alter or diminish the preclusive effect of this paragraph.

8.1.6 The Design-Builder shall not include in each request for Change Order any increases in the Design-Builder's costs of insurance, Subguard, or any Design-Builder or subcontractor bonds (collectively, "Bonds"); provided, however, and notwithstanding anything to the contrary in the foregoing, the Design-Builder shall have the right to receive Change Orders increasing the GMP to compensate Design-Builder for increases in the costs of the payment and performance Bonds provided by Design-Builder as and when such increases are required to be paid by Design-Builder to the issuer of such Bonds. Prior to Final Payment the Owner and Design-Builder will determine the amount by which the Design-Builder's costs of insurance, Subguard, and Bonds increased as a result of all Change Orders; and, if such costs have increased, the Design-Builder will be entitled to an adjustment in the GMP by the amount of such increased costs together with the Design-Builder's Fee thereon notwithstanding the provisions of Section 8.1.5 of the Agreement to the contrary.

## 8.2 INTERIM DIRECTED CHANGE

8.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Design-Builder on the adjustment, if any, in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design Phase services.

8.2.2 The Owner and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, arising out of Interim Directed Change. As the changed Work is completed, the Design-Builder shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. Pending final determination of cost to the Owner, amounts not in dispute may be included in applications for payment and shall be paid by Owner.





8.2.3 When the Owner and the Design-Builder agree upon the adjustments in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directed Changes on which the Owner and Design-Builder have reached agreement on the GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

### 8.3 MINOR CHANGES IN THE WORK

8.3.1 The Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

8.3.2 The Design-Builder shall promptly inform the Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

8.4 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Design-Builder shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in this article.

### 8.5 DETERMINATION OF COST

8.5.1 An increase or decrease in the GMP or estimated Cost of the Work resulting from a change in the Work shall be determined by one or more of the following methods:

8.5.1.1 unit prices set forth in this Agreement or as subsequently agreed;

8.5.1.2 a mutually accepted, itemized lump sum;

8.5.1.3 costs determined as defined in section 6.2 and ARTICLE 7. The Trade 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.

8.5.2 If an increase or decrease in Contract Price or Contract Time cannot be agreed to as set forth in section 8.5.1 above, and the Owner issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the change. In case of a net decrease in the GMP, the Design-Builder's Fee (lump sum amount) shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

8.5.3 If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Design-Builder, such unit prices shall be equitably adjusted.

8.5.4 If the Owner and the Design-Builder disagree as to whether work required by the Owner is within the scope of the Work, the Design-Builder shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a written order for the Design-Builder to proceed, the Design-Builder shall perform the disputed work and the Owner shall pay the Design-Builder fifty percent (50%) of its actual, direct cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.6 CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the GMP, estimated Cost of the Work, the Design-Builder's Fee and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, the Design-Builder shall give the Owner written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. Thereafter, the Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. If Design-Builder fails to provide formal, written notice as required in this paragraph within twenty-one (21) days of such occurrence giving rise to the claim, any claim for additional cost or extension of time, including any claims sounding in delay or lost productivity based upon facts or circumstances underlying the claim, shall be deemed waived, barred and forfeited, and Design-Builder shall not be permitted to pursue same pursuant to ARTICLE 12, nor through any other forum or venue. The Owner shall respond in writing denying or approving the Design-Builder's claim no later than twenty-one (21) Days after receipt of the Design-Builder's documentation of claim. Owner's

failure to respond shall be deemed a denial of the Design-Builder's claim. Any change in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design Phase services, resulting from such claim shall be authorized by Change Order.

**8.7 INCIDENTAL CHANGES** The Owner may direct the Design-Builder to perform incidental changes in the Work upon concurrence with the Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Owner shall initiate an incidental change in the Work by issuing a written order to the Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

## **ARTICLE 9 PAYMENT FOR CONSTRUCTION PHASE SERVICES**

### **9.1 PROGRESS PAYMENTS**

9.1.1 On a monthly basis after the Construction Phase has commenced, the Design-Builder shall submit to the Owner an application for payment consisting of the Cost of the Work performed up to the end of the month, along with a proportionate share of the Design-Builder's Fee. Prior to submission of the next application for payment, the Design-Builder shall furnish to the Owner a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between the Owner and the Design-Builder. Such monthly applications shall be supported by data substantiating the Contractor's right to payment as the Owner may require, including weekly payroll certification (Commonwealth of Pennsylvania Department of Labor and Industry form LLC-25), Steel Certification form with backup (as applicable), Detailed Cost Breakdown/Schedule of Values, and DBE Utilization data. Payment cannot be processed until this substantiating information is submitted with the monthly application for payment.

9.1.2 Within fifteen (15) Days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within forty-five (45) Days after approving such application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount then, within fifteen (15) Days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

9.1.3 The Design-Builder warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design-Builder, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as liens.



9.1.4 The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

9.1.5 Upon Substantial Completion of the Work, the Owner shall pay the Design-Builder the unpaid balance of the Cost of the Work, compensation for Design Phase services and the Design-Builder's Fee, less one-hundred-fifty percent (150%) of the cost of completing any unfinished items as agreed to between the Owner and the Design-Builder as to extent and time for completion. The Owner thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

9.1.6 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by the Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the worksite.

9.2 RETAINAGE From each progress payment made prior to the time of Substantial Completion, the Owner may retain Six percent (6%) of the amount otherwise due after deduction of any amounts as provided in section 9.3, and in no event shall such percentage exceed any applicable statutory requirements. Retainage to be held on trade contract/subcontract work only or as agreed otherwise by the Parties. If the Owner chooses to use this retainage provision:

9.2.1 the Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.2 the Owner may release retainage on that portion of the Work a Subcontractor has completed, in whole or in part, and which work the Owner has accepted;

9.3 ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT The Owner may adjust or reject an application for payment or nullify a previously approved Design-Builder application for payment, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:

9.3.1 the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

9.3.2 except as accepted by the insurer providing Builders Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the Owner or Others to whom the Owner may be liable;



9.3.3 the Design-Builder's failure to properly pay the Design-Professional, Subcontractors or Material Suppliers for labor, materials, equipment or supplies furnished in connection with the Work, provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;

9.3.4 Defective Work not corrected in a timely fashion;

9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the GMP is not sufficient to offset any direct damages that may be sustained by the Owner as a result of the anticipated delay caused by the Design-Builder;

9.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

9.3.7 uninsured third-party claims involving the Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Design-Builder furnishes the Owner with adequate security in the form of a surety bond, letter of credit or other collateral or commitment sufficient to discharge such claims if established.

No later than fifteen (15) Days after receipt of an application for payment, the Owner shall give written notice to the Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

#### 9.4 OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

9.4.1 Portions of the Work that are completed or partially completed may be used or occupied by the Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the Owner.

#### 9.5 FINAL PAYMENT

9.5.1 Final Payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase services and the Design-Builder's Fee, shall be due and payable when the work is fully completed. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Work have been paid or otherwise satisfied. Substantiating documentation that shall accompany the Application for Final Payment shall include, but is



not necessarily limited to, the following: (a) Completed Certificate/Application of Payment signed by all applicable Parties; (b) Contractor's Affidavit for Final Payment, (c) Consent of Surety to Final Payment, (d) Certificate of Completion and Release of Liens, (e) Final/total DBE Utilization data, (f) OSHA recordable accident data, (g) construction waste management documentation, (h) Waiver of Mechanic's Liens, and (i) all maintenance manuals, as-built drawings and warranty certificates that may be required. If any third party fails or refuses to provide a release of claim or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify the Owner from liability

9.5.2 In making final payment the Owner waives all claims except for:

9.5.2.1 outstanding liens and Design-Builders' obligation to satisfy its payment obligations to Subcontractors and Material Suppliers;

9.5.2.2 latent defects or deficiencies not known to Owner at the time of final payment, including but not limited to improper workmanship, defective materials, work not in conformance with the Contract Documents and design defects; and

9.5.2.3 terms of any special warranties required by the Contract Documents.

9.5.3 In accepting final payment, the Design-Builder waives all claims except those previously made in writing and which remain unsettled.

## ARTICLE 10 INDEMNITY

### 10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, trustees and employees (the Indemnitees) from all claims for bodily injury, sickness, or death and property damage (other than to the Work itself), including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions or failure to conform to the provisions of the Contract Documents of the Design-Builder, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Design-Builder shall not be required to indemnify or hold harmless the Indemnitees for any negligent acts or omissions of the Indemnitees.

10.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, its officers, directors or members, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury, sickness or death and property damage (other than to the Work itself), including reasonable attorneys' fees, costs and expenses, that may arise from the performance of work by the Owner or Others, but only to the extent caused by the negligent acts or omissions of the Owner or Others.





10.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Design-Builder, anyone directly or indirectly employed by the Design-Builder or anyone for whose acts the Design-Builder may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

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

## **ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION**

### **11.1 SUSPENSION BY THE OWNER FOR CONVENIENCE**

11.1.1 The Owner may order the Design-Builder in writing to suspend, delay or interrupt all or any part of the Work without cause for its convenience

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension, delay or interruption of work by Owner. Adjustments shall not be sought and shall not be permitted: (1) for short term suspension, delay or interruption required to accommodate or work around campus events or activities; or (2) due to any requirement that Design-Builder coordinate its work with another party or parties performing a separate project for Owner in the vicinity of the Worksite, where such coordination calls for no more than additional planning and communication

### **11.1.3 TERMINATION BY THE OWNER FOR CAUSE**

11.1.3.1 If the Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment, to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Design-Builder may be deemed in default. If the Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then the Owner shall give the Design-Builder and, if applicable, the surety, a second notice to correct the default within a three (3) Day period

11.1.3.2 If the Design-Builder fails to commence and continue satisfactory correction of the default within three (3) Days following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) declare the Design-Builder to be in default





and terminate this Agreement and provide written notice of termination to Design-Builder; (b) take possession of the Worksite; (c) complete the Work utilizing any reasonable means; (d) withhold payment due to the Design-Builder; and (e) as the Owner deems necessary, supply workers and materials, equipment and other facilities for the satisfactory correction of the default, and charge the Design-Builder the costs and expenses, including reasonable Overhead, profit and attorneys' fees.

11.1.3.3 In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to the Design-Builder, but shall give prompt written notice of such action to the Design-Builder following commencement of the action.

11.1.3.4 If the Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if the Design-Builder or the Design-Builder's trustee fails to assume, or rejects the Agreement, or if there has been a default and the Design-Builder is unable to give adequate assurance that the Design-Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the United States Bankruptcy Code. The rights and remedies set forth herein shall not be deemed to limit the ability of the Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

11.1.3.5 If the Owner exercises its rights under subsection 11.1.3.1 or 11.1.3.2, upon the request of the Design-Builder the Owner shall provide a detailed accounting of the costs incurred by the Owner.

11.1.3.6 If the Owner terminates this Agreement for default, and it is later determined that the Design-Builder was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 11.2.

**11.2 TERMINATION BY OWNER FOR CONVENIENCE** If the Owner terminates this Agreement other than as set forth in section 11.1.3, the Owner shall pay the Design-Builder for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs.

11.2.1 If the Owner terminates this Agreement before commencing the Construction Phase, the Design-Builder shall be paid for the Design-Builder's Design Phase services provided to date as set forth in subsection 6.1.

11.2.2 If the Owner terminates this Agreement after commencement of the Construction Phase, the Design-Builder shall be paid for the Construction Phase services provided to date pursuant to subsection 6.2.

11.2.3 The Owner shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Owner, for all equipment retained. The Owner shall



assume and become liable for obligations, commitments and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, the Design-Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

### 11.3 TERMINATION BY THE DESIGN-BUILDER

11.3.1 Upon fourteen (14) Days' written notice to the Owner, the Design-Builder may terminate this Agreement for any of the following reasons:

11.3.1.1 if the Work has been stopped for a sixty (60) Day period

- a. under court order or order of other governmental authorities having jurisdiction; or
- b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Design-Builder, materials are not available;

11.3.1.2 if the Work is suspended by the Owner for sixty (60) consecutive Days;

11.3.1.3 if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with subsection 3.2 of this Agreement.

11.3.2 If the Owner has for sixty(60) Days failed to pay the Design-Builder pursuant to subsection 9.1.2, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within fourteen (14) Days of giving written notice to the Owner, then upon fourteen (14) Days' additional written notice to the Owner, the Design-Builder may terminate this Agreement.

11.3.3 Upon termination by the Design-Builder in accordance with this section, the Design-Builder shall be entitled to recover from the Owner payment for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in subsection 11.2.1 or 11.2.2, depending on when the termination occurs, and subsection 11.2.3.

## ARTICLE 12 DISPUTE MITIGATION AND RESOLUTION

12.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with the Agreement.



12.2 DIRECT DISCUSSIONS If a dispute arises between the parties relative to the Work, the Project, or otherwise related to this Agreement, the Parties shall follow the procedures set forth in this ARTICLE. The Parties shall first endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within ten (10) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within ten (10) Business Days to endeavor to reach resolution. If the dispute remains unresolved after thirty (30) Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected herein.

12.3 MEDIATION If direct discussions pursuant to section 12.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation. The mediator shall be jointly selected by the Parties, and the mediator shall apply rules and procedures of his or her own choosing. In the event that the Parties are unable to mutually agree upon selection of a mediator, the mediator selection procedures within the current Construction Industry Mediation Rules of the American Arbitration Association (AAA) shall be utilized. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within sixty (60) Business Days of the conclusions of direct discussions pursuant to section 12.2. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The mediator's fees and expenses, shall be shared equally by the Parties. The venue of any mediation procedure shall be State College, Pennsylvania, unless the parties mutually agree upon a different location.

12.4 BINDING DISPUTE RESOLUTION If the matter is unresolved after the conclusion of mediation, the Parties shall submit the matter to binding arbitration. A single arbitrator shall be jointly selected by the Parties. In the event that the parties are unable to mutually agree upon selection of an arbitrator, the arbitrator selection procedures within the current Construction Industry Arbitration Rules of the AAA shall be utilized. The binding arbitration process shall proceed according to rules and procedures mutually agreed upon by the Parties, in consultation with the arbitrator. In the event that the Parties are unable to mutually agree upon the rules and procedures to be applied, the aforementioned AAA Arbitration Rules shall be utilized. The arbitrator's fees and expenses shall be shared equally by the Parties. The Parties shall be responsible for their own attorneys' fees and other costs associated with arbitration. The venue of any binding dispute resolution procedure shall be State College, Pennsylvania unless the Parties mutually agree upon a different location.

12.4.1 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations under Pennsylvania law. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations.



12.4.2 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

12.5 The Parties agree that the exclusive means of resolving any and all disputes relating to or arising out of this Agreement shall be pursuant to the procedures specified within this ARTICLE of the Agreement. However, in the event that either Party attempts to file any legal or equitable cause of action in a court of law for purposes of interpretation or enforcement of this Agreement, whether or not such a court filing is permissible under this Agreement, the sole and exclusive venue for such filing shall be the Court of Common Pleas of Centre County, Pennsylvania.

12.6 MULTIPARTY PROCEEDING All Parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

## **ARTICLE 13 MISCELLANEOUS**

13.1 EXTENT OF AGREEMENT: Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Design-Builder and not for the benefit of any third- party.

13.2 ASSIGNMENT: Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other.

13.3 GOVERNING LAW: This Agreement shall be governed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

13.4 SEVERABILITY: The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5 NO WAIVER OF PERFORMANCE: The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

13.6 TITLES: The titles given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.7 JOINT DRAFTING: The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in



reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

**13.8 RIGHTS AND REMEDIES:** The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

**13.9 PREVAILING WAGE ACT:** The Design-Builder is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, Act No. 442, August 15, 1961 (P.L. 987), and as amended August 9, 1963, Act No. 342; and said Act is incorporated herein by reference as fully as though the same were here set forth at length.

**13.10 EQUAL EMPLOYMENT OPPORTUNITY AND REFERRAL TO NON-DISCRIMINATION CLAUSE:** Design-Builder 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 Design-Builder 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 Design-Builder 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. The Non-Discrimination Clause as issued by the Pennsylvania Human Relations Commission is included below.

**13.11 NON-DISCRIMINATION CLAUSE:** During the term of this Contract, Design-Builder agrees as follows:

13.11.1 Design-Builder 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.

13.11.2 Design-Builder shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their 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. Such affirmative action shall include, but is not limited to, the following: Employment





upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Design-Builder shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

13.11.3 Design-Builder shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

13.11.4 Design-Builder shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

13.11.5 Design-Builder shall in solicitations or advertisements placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.

13.11.6 Design-Builder shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Similar notices shall be sent to every other source of recruitment utilized by Design-Builder.

13.11.7 It shall be no defense to a finding of a non-compliance with this non-discrimination clause that recipient had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Design-Builder was not on notice of the third-party discrimination, or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

13.11.8 Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Design-Builder will be unable to meet its obligations under this non-discrimination clause, the Design-Builder shall then employ and fill vacancies through other non-discriminatory employment procedures.

13.11.9 Design-Builder shall comply with all rules, regulations and orders issued by the Governor, the Attorney General, and the Human Relations Commission relating to laws, prohibiting discrimination in hiring or employment opportunities. In the event of Design-Builder's non-compliance with the non-discrimination clause of this Contract or with any such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and recipient may be declared ineligible for further Commonwealth contracts, and such





other sanctions may be imposed and remedies invoked as provided by rule, regulation or order of the Governor, Attorney General, or the Human Relations Commission, or as otherwise provided by law.

13.11.10 Design-Builder shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by the Owner and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with this clause. If Design-Builder does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Owner or by the Bureau of Affirmative Action.

13.12 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). The Design-Builder, Subcontractors, and Material Suppliers shall be required to comply with all provisions of this Act.

13.13 COLLABORATIVE ENVIRONMENT: Design-Builder, with assistance from the Owner, shall develop an Integrated Project Delivery plan outlining collaborative concepts to be incorporated into the Work. Collaboration Plan shall incorporate integrated concepts such as early involvement of key participants, decision making process mapping, co-location, team-building, and information sharing technology options. Performance measures shall also be established for the project by the Parties to drive team performance and tracked quarterly.

13.14 PENNSYLVANIA STATE UNIVERSITY PROJECT DELIVERY SYSTEM: Design-Builder shall assist the Owner in the development of the project deliverable requirements as outlined in the "Pennsylvania State University Project Delivery System." Refer to Exhibit E for the process diagram and deliverable listing. The Pennsylvania State University Project Delivery Guidebook, which defines the process and the deliverables, will be made available to the Design-Builder by the Owner.

13.15 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE): Develop and implement a system to attain DBE participation. The Owner has set a goal of 15% combined utilization of DBE contractors and suppliers. Design-Builder will track and monitor the DBE participation and submit monthly updates to the Owner. In coordination with the Owner, the Design-Builder is to conduct an Open House and hold workshops in an effort to increase DBE participation. All efforts shall be coordinated with the Office of Physical Plant Contractor Liaison. It is also expected that the Design-Builder actively pursue DBE participation for consulting and professional services. Percentage participation shall be reported to the Owner upon request.

13.16 BACKGROUND CHECK POLICY: The Design -Builder and each Trade 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>).



## 13.17 PUBLIC WORKS EMPLOYMENT VERIFICATION ACT

13.17.1 As a precondition to the award of the contract for the Work described herein, Design -Builder and each Trade Contractor must complete the Commonwealth of Pennsylvania 'Public Works Employment Verification Form' ("Form") and provide a copy to Owner.

13.17.2 Furthermore, by execution of this Agreement, the Design -Builder and each Trade Contractor hereby affirms as follows:

13.17.2.1 Design -Builder and each Trade 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.

13.17.2.2 Design-Builder and each Trade 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](http://www.dgs.state.pa.us), where the Form may be obtained. Design -Builder and each Trade Contractor will further ensure that prior to beginning onsite or offsite work, every subcontractor shall submit a completed Form to the Owner.

13.17.2.3 Design-Builder and each Trade Contractor 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.

13.17.2.4 Design-Builder and each Trade Contractor shall cooperate with Owner and Pennsylvania Department of General Services in the event of an audit arising under the Act.

13.18 TAXES The Design-Builder and each Trade 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 Design-Builder and each Trade 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 (S31.11--SS31.16).

The Design-Builder and each Trade 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 Design-Builder and each Trade 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 Design-Builder and each Trade Contractor shall incorporate this Owner's right to any and all Subcontracts.

13.19 RIGHT TO AUDIT:



13.19.1 Design-Builder's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. An Owner's representative or an outside representative engaged by Owner may perform such audits. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law.

13.19.2 Design-Builder's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with Design-Builder's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of: a) contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the contractor or his payees.

13.19.3 Design-Builder shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Design-Builder and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Design-Builder will cooperate fully and will require Related Parties and all of Design-Builder's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.

13.19.4 Owner's authorized representative or designee shall have reasonable access to the Design-Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

13.19.5 If an audit inspection or examination in accordance with this Article, discloses overpricing or overcharges (of any nature) by the Design-Builder or any subcontractor to the Owner in excess of one-half of one percent (.5%) of the total contract billings, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Design-Builder. Any adjustments and/or payments which must be made as a result of any such audit or inspection



of the Design-Builder's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Design-Builder.

#### 13.20 CONSTRUCTION WASTE MANAGEMENT:

13.20.1 The Design-Builder is required to recycle and/or salvage 75% 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 trade/subcontractors. The waste management plan is to be approved by the Office of Physical Plant Project Leader and submitted with the initial application for payment.

13.20.2 At the end of the project, prior to the application for Final Payment, the Design-Builder is required to submit a calculation documenting that the project achieved a 75% diversion rate. The Application for Final Payment will be held until this documentation is received by the Owner. The documentation should include a tabulation of the total waste material, quantities diverted and the means by which they were diverted. A signature declaring that the requirements have been met must be included.

13.20.3 If this project is attempting to achieve LEED certification, the LEED process to achieve the Construction Waste Management credit(s) supersedes this section.

13.21 LEAD-FREE PLUMBING CERTIFICATION: The Design-Builder 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 Design-Builder, notarized and submitted to the University before the water service turn-on.

13.22 FEDERAL CLEAN AIR ACT: The Design-Builder 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.

13.23 EXECUTION OF AGREEMENT: This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original and all such counterparts, taken together, shall constitute one and the same Agreement. The Parties further agree that executed copies of this Agreement may be exchanged electronically or by facsimile and that a signature transmitted in such a manner shall be acceptable and binding and shall be treated for all purposes in the same manner as an original signature.

#### 13.24 SOCIAL RESPONSIBILITY / CONTRACTOR CONDUCT

13.24.1 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.

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

## ARTICLE 14 CONTRACT DOCUMENTS

14.1 CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement, including all Exhibits, as identified at section 1.3.2.
- (b) Basis of Design/Owner's Program.
- (c) Owner provided information pursuant to Article 3 and other Owner information identified as intended to be a contract document.
- (d) The Schematic Design Documents upon Owner approval pursuant to section 2.1.4.
- (e) The Design Development Documents upon Owner approval pursuant to section 2.1.6.
- (f) The Construction Documents upon Owner approval under section 2.1.7.
- (g) Any/all procurement instruments issued by the Owner in the procurement of this Agreement, together with all respective responses or submissions of the Design-Builder.

14.2 ORDER OF PRECEDENCE In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) design documents approved by the Owner pursuant to sections 2.1.4 - 2.1.7 in order of the most recently approved; (d) information furnished by the Owner pursuant to Article 3 or designated as a contract document in ARTICLE 14; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

## ARTICLE 15 INSURANCE

### 15.1 DESIGN-BUILDER'S INSURANCE

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

15.1.1.1 **Workers' Compensation** for statutory obligations imposed by workers' compensation and occupational disease laws. **Employers' Liability** insurance shall be provided with limits not less than:

- a) \$500,000 bodily injury by accident per accident





- b) \$500,000 bodily injury by disease policy limit
- c) \$500,000 bodily injury by disease per employee

15.1.1.2 **Business Automobile Liability** (bodily injury liability and property damage liability) for all owned, leased, hired, non-owned vehicles with limits not less than \$1,000,000 Combined Single Limit.

15.1.1.3 **Commercial General Liability** insurance including coverage for bodily injury, property damage, and personal and advertising injury, for premises and operations, products and completed operations, and contractual liability arising from all operations, written on an occurrence basis with limits not less than:

FOR PROJECTS UNDER \$1,000,000

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

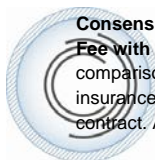
The Design-Builder shall maintain completed operations liability insurance for not less than one year after Substantial Completion, or as required by the Contract Documents, whichever is longer.

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 Design-Builder 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.

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





15.1.1.5 **Pollution Liability** insurance: If the nature of the Work involves professional services, evaluating, testing, remediation, abatement, removal, storage, and transportation of hazardous materials or substances or pollutants, the Design-Builder 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

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 Design-Builders/trade-contractor's/supplier's/vendor's work, and the renewal policies shall maintain the same retroactive date.

15.1.2 The insurance limits required for the Employers' Liability, Business Automobile Liability and CGL coverage required under subsection 16.1.1 may be provided by a combination of primary and Excess or Umbrella Liability policies.

15.1.3 The Owner must be named on the Design-Builder's Commercial General Liability insurance as an additional insured.

15.1.4 The Design-Builder shall maintain in effect all insurance coverage required under subsection 15.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located.

15.1.5 If the Design-Builder 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.

15.1.6 Insurance policies required under subsection 15.1 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.

15.1.7 Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Design-Builder 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 15.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

15.1.8 The Design-Builder's insurance shall be primary and non-contributory to the University's insurance.

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

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

## 15.2 PROPERTY INSURANCE

15.2.1 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 Design-Builder, 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 Design-Builder) 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 Design-Builder, 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.

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

15.2.2 If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Design-Builder and the Design-Professional before the Work is commenced. The Design-Builder 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 Design-Builder's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

15.2.2.1 If the Owner does not obtain insurance to cover the risk of physical loss resulting from Terrorism, the Owner shall give written notice to the Design-Builder before the Work commences. The Design-Builder 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.

15.2.3 Owner and Design-Builder 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 Design-Builder may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 15.2.1.

15.2.4 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 Design-Builder until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

### 15.3 OWNER'S INSURANCE

15.3.1 BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

OWNER'S LIABILITY INSURANCE The Owner shall maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including loss of use and claims, losses and expenses arising out of the Owner's acts or omissions.

## ARTICLE 16 BONDS

16.1 Performance and Payment Bonds are required of the Design-Builder. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Owner. Owner's acceptance shall not be withheld without reasonable cause.



16.2 Such Performance Bond shall be issued in the penal sum equal to one-hundred percent (100%) of the Guaranteed Maximum Price (GMP).

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to Article 16, whether or not such insurance is provided or is in an amount sufficient to cover such damages.

16.3 The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond. The Design-Builder's Payment Bond for the Project, if any, shall be made available by the Owner or the Design-Builder upon the Subcontractor's written request.

16.4 Any increase in the GMP Price that exceeds ten percent [10%] in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent [10%] amount, the penal sum of the bond shall remain equal to one-hundred percent [100%] of the GMP or as otherwise provided in subsection 16.2. The Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the GMP or the Dates of Substantial Completion or Final Completion, though the Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time. A copy of the Design-Builder's Payment Bond for the Project, if any, shall be furnished by the Owner or the Design-Builder upon the Subcontractor's written request.

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

**THE PENNSYLVANIA STATE UNIVERSITY, OWNER**

\_\_\_\_\_ Title

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

Date of Execution: \_\_\_\_\_

**XXXXXXXXXXXXXXXXXXXXXXXXXXXX, DESIGN-BUILDER**

\_\_\_\_\_

\_\_\_\_\_ ATTEST

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

Secretary or Treasurer  
(circle appropriate title)

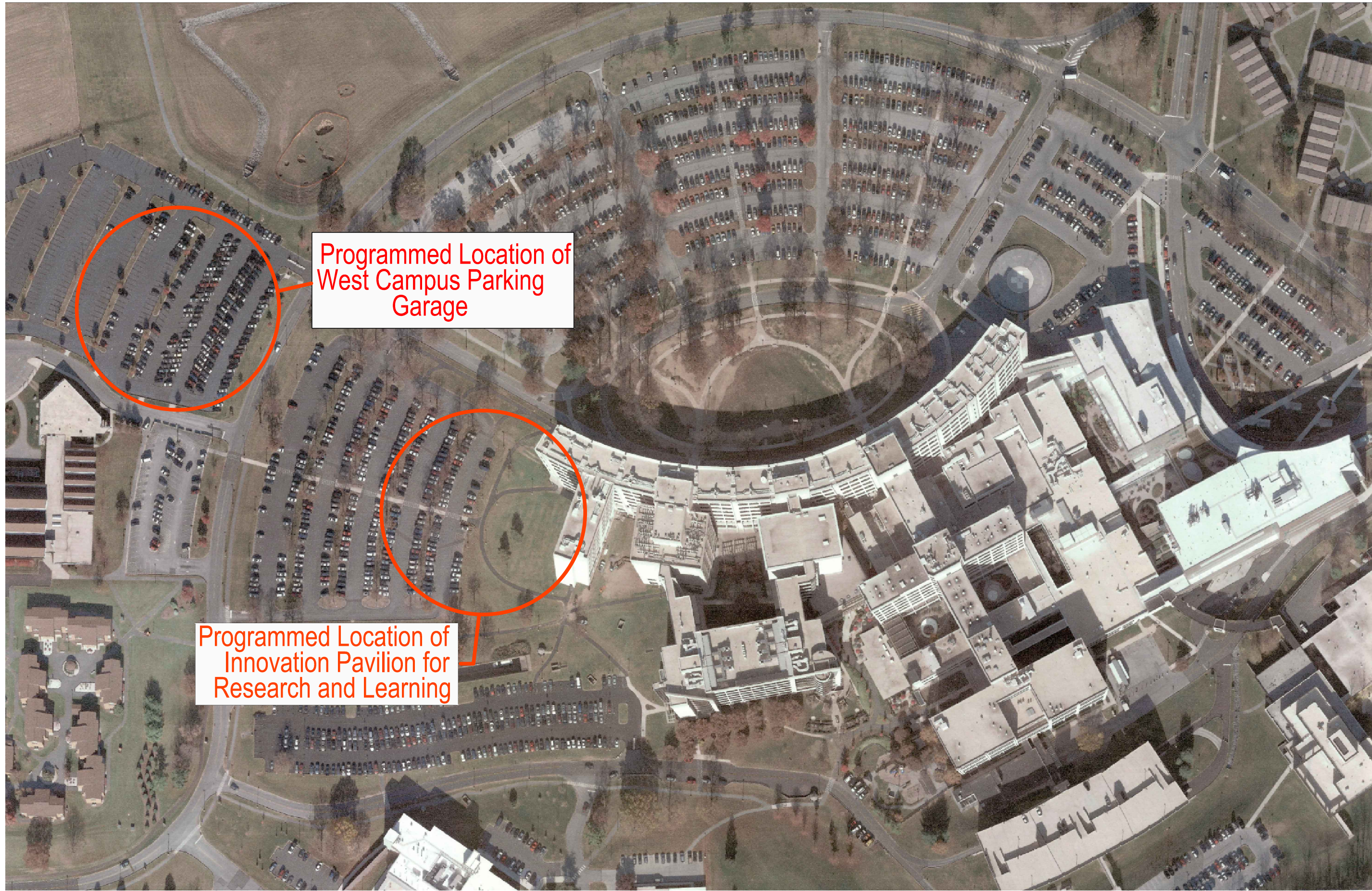
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(print title of person signing above)

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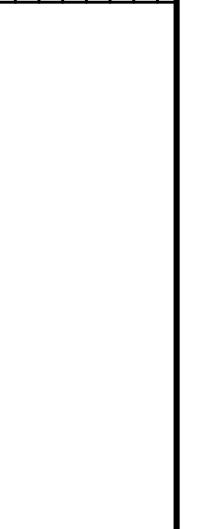




Programmed Location of  
West Campus Parking  
Garage

Programmed Location of  
Innovation Pavilion for  
Research and Learning

NO.	REVISION	DATE	DR. T. CHI.



PENN STATE HERSCHEY  
Milton S. Hershey  
Medical Center

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be in feet unless otherwise indicated.

DRAWING TITLE  
PROGRAM LOCATION SITE PLAN

DRAWN BY: A.P.S.  
CHECKED BY:  
DATE: 08/20/17

DATE: 08/20/17

SCALE: N.T.S.

DWG NO. S-1