

Design-Build Agreement

Between
State of Connecticut
Department of Public Works

Bureau of Design and Construction
Fourth Floor
165 Capitol Avenue
Hartford, Connecticut 06106

And

The Fusco Corporation
555 Long Wharf Drive
New Haven, CT 06511

For

Phase 1
New Regional Training Institute
Connecticut Army National Guard (CTARNG)
Camp Rell
Niantic, Connecticut

Project No.: BI-Q-588-DB
Agreement No.: BI-Q-588-DB
Dated: April 15, 2009

Core CT # 09DPW1077AA

Design-Build Agreement Between the State of Connecticut and Design Builder

AGREEMENT made as of the 15th day of April in the year of 2009

BETWEEN the State of Connecticut, acting herein by Raeanne V. Curtis, its Commissioner of the Department of Public Works (the "Owner" or "Commissioner"), duly authorized, pursuant to Section 4b-24(4) of the Connecticut General Statutes, as revised.

and the Design-Builder:

The Fusco Corporation
555 Long Wharf Drive
New Haven, CT 06511

This Agreement pertains to services to be performed in connection with the design and construction and related improvements as described herein of the following Project:

Phase 1
New Regional Training Institute
Connecticut Army National Guard (CTARNG)
Camp Rell
Niantic, Connecticut

Design and construction of a multi-story facility of 83,000 gross square feet (GSF) that shall include the following: building/site demolition; site improvements, utilities, and landscaping; state of the art telecommunications; LEED Silver rating; furniture, fixtures, and equipment (FF&E) design and installation (with the CTARNG purchasing and delivering to the site the FF&E); and Anti-Terrorism/Force Protection measures, all as defined in the Request for Proposals dated August 20, 2008, including Addenda 1, 2, 3, and 4.

In consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Owner and Design-Builder agree as set forth below.

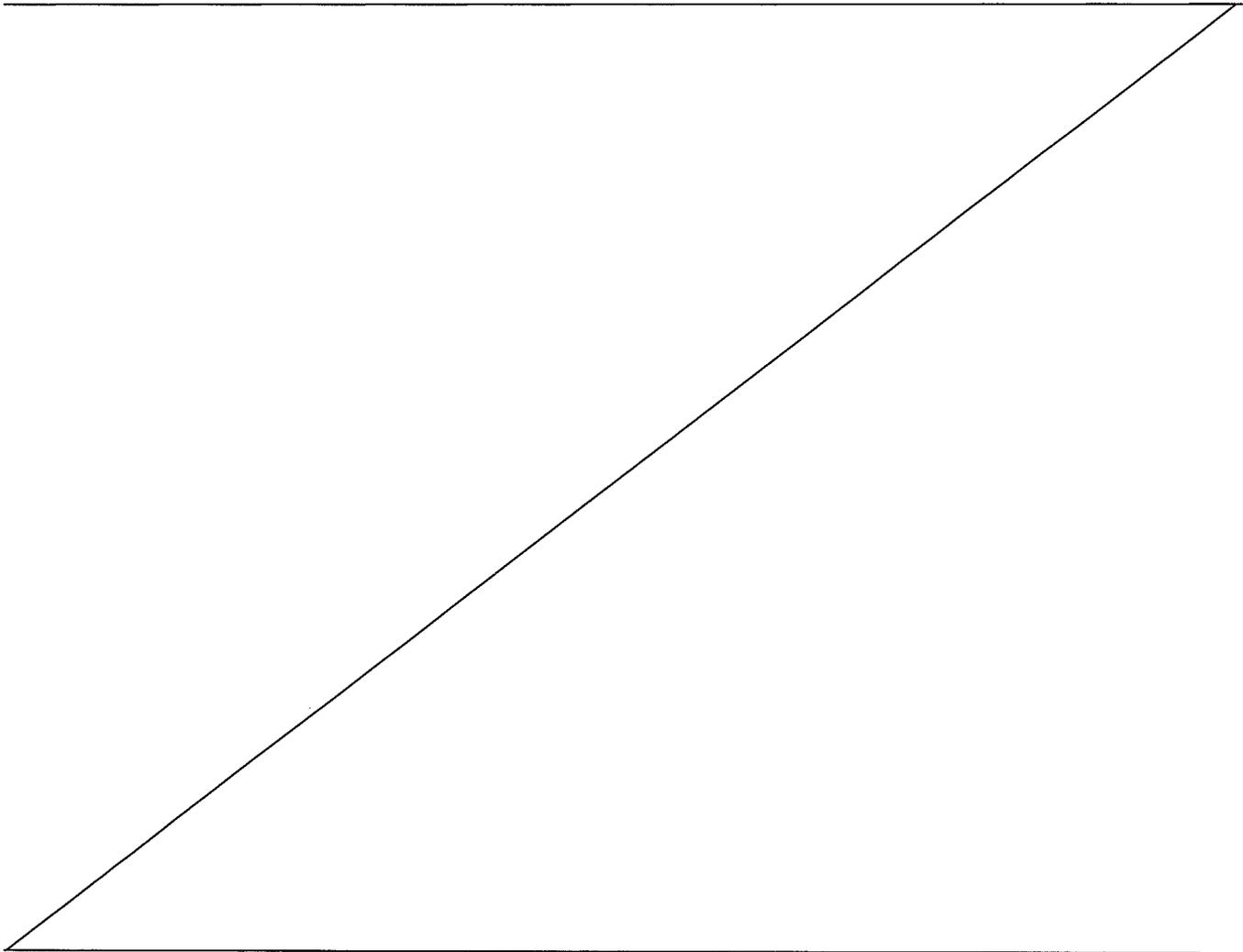
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ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

- 1.1.1 For purposes of this Agreement, the following words and terms shall have the meanings set forth below:
- 1.1.2 **Acceptance** means the full and final completion of all Work in accordance with the Contract Documents, including all punchlist items, to the satisfaction of the Owner, except as may be set forth in a Certificate of Acceptance.
- 1.1.3 **Acceptance Date** means the date on which the Design Builder achieves Acceptance. The Owner shall notify the Design-Builder in writing pursuant to Section 2.9 that Acceptance has been accomplished.
- 1.1.4 **Addendum** means a document issued by the Owner that modifies or clarifies the RFP.
- 1.1.5 **Agreement Amendment** is defined in Section 4.1 hereof.
- 1.1.6 **Applicable Laws** means any applicable or relevant federal, state, or local statutes, laws, codes, regulations, ordinances, orders, determinations, requirements, rules or rulings, including any Environmental Laws, and any judicial or administrative interpretations, orders or decrees with respect thereto.
- 1.1.7 **Business Day** means a Calendar Day other than Saturdays, Sundays and days designated as Connecticut state holidays on which banks in Connecticut are permitted to be closed.
- 1.1.8 **Calendar Day** means each day of the calendar.
- 1.1.9 **Certificate of Acceptance** means the certificate issued by the Owner pursuant to Section 2.9 in the form specified in Appendix E.
- 1.1.10 **Certificate of Compliance** means the certificate issued by the Design-Builder's Design Professional pursuant to Section 6.2 in the form specified in Appendix E.
- 1.1.11 **Certificate of Substantial Completion** means the certificate issued by the Owner pursuant to the provisions of Section 2.5 in the form specified in Appendix E.
- 1.1.12 **Clarification** means an interpretation of the Contract Documents that may result in minor changes to the Work not involving an adjustment to the Contract Price or the Project Schedule and not inconsistent with the intent of the Contract Documents, provided the Clarification is documented and approved in writing by both the Owner and Design-Builder.
- 1.1.13 **Construction Administrator** means a Person, under contract with or employed by the Owner. The Construction Administrator may be the Project Manager or assistant project manager, or an independent architect, consulting architect, consulting professional engineer or any other designee as authorized and identified by the Owner. The Construction Administrator does not have the authority to bind or otherwise make decisions for the Owner, as such authority is reserved to the Project Manager and the Owner.
- 1.1.14 **Construction Documents** means the architectural and engineering documents setting forth the complete design for the Project prepared by the Design Professional. Construction Documents include, but are not limited to, the Specifications, the Drawings and all modifications thereto. Construction Documents shall include all items appropriate or necessary for the proper execution and completion of the Work to the Owner's satisfaction. The Construction Documents shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the Owner's requirements. The Construction Documents shall be prepared and sealed by the Design Professional as required by the State of Connecticut General Statutes.
- 1.1.15 **Contractor** means (i) a Person, other than a Design Professional under direct contract with the Design-Builder responsible for performing the construction phase of the Work under

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this Agreement, or (ii) the Design-Builder where the Design-Builder is also the Person performing the construction phase of the Work.

- 1.1.16 Contract Documents** means this Agreement, including the appendices attached hereto; the Request for Qualifications; the Request for Proposals; any Addenda to the RFP; the Design-Builder's Proposal; all of the Refinement Documents; all Addenda; all Clarifications; and all Agreement Amendments.
- 1.1.17 Contract Price** is defined in Section 3.1.
- 1.1.18 Critical Path** means the sequence of all critical tasks that have a significant impact on the completion of the Work.
- 1.1.19 Design-Builder** is defined in the first paragraph of this Agreement.
- 1.1.20 Design-Builder's Proposal** means the written Proposal and Drawings as described in Appendix B submitted by Design-Builder in response to the Request for Proposals.
- 1.1.21 Design Professional** means a Connecticut licensed design professional, employed or contracted by the Design-Builder, who is responsible for all architectural, engineering and other design services to be performed in connection with the Project.
- 1.1.22 Drawings** means that part of the Contract Documents and Construction Documents prepared by the Design Professional that graphically show the scope, extent, and character of the Work to be performed by Design-Builder.
- 1.1.23 Environmental Laws** means any federal or state statute, law, code, rule, regulation, order, permit, or decree regulating or relating to the protection of human health or the environment, or imposing liability or standards of conduct concerning any Regulated Substance, hazardous, toxic, or waste substance, element, compound, mixture or material, as now or at any time hereafter in effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9601 et seq.; the Emergency Planning and Right To Know Act, 42 U.S.C. § 11101 et seq.; the Endangered Species Act, 16 U.S.C. § 1531 et seq.; the Lead-Based Paint Exposure Reduction Act, 15 U.S.C. § 2681 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Solid Waste Disposal Act (including the Resource Conservation and Recovery Act) 42 U.S.C. § 6901 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 9601 et seq.; Clean Air Act, 42 U.S.C. § 7401 et seq.; the Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the River and Harbors Act of 1899, 33 U.S.C. § 401 et seq.; and all rules and regulations of the U.S. Environmental Protection Agency (EPA) and the Connecticut Department of Environmental Protection and the Connecticut Department of Health, including Titles 19 and 22a of the Connecticut General Statutes, or any other state, federal, or local department, board, or agency, or any other agency or governmental board or entity having jurisdiction over environmental or health and safety matters, as such may have been amended.
- 1.1.24 Force Majeure** means any event which renders impossible, prevents, substantially or materially interrupts or delays the performance of an obligation of a party to this Agreement, if such event is beyond the reasonable control of such party and which, by the exercise of due diligence, such party would be unable to overcome, including: strikes, lockouts, sit-downs, material or labor restrictions by any governmental agency, shortages of material or labor, unusual transportation delays, riots, floods, explosions, earthquakes, fire, acts of the public enemy, wars, insurrections, terrorism, changes in Applicable Law, and the commencement and continued pendency of legal proceedings not brought by any party to this Agreement or any affiliate thereof and not based on any event or circumstance which constitutes a breach or default by such party of any obligations, covenants or agreements under this Agreement or which is otherwise within the reasonable control of such party, which legal proceedings restrain or enjoin the performance by such party of such obligation.
- 1.1.25 General Conditions** mean the Owner's General Conditions as set forth in RFP Volume I.

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- 1.1.26 **Hazardous Material** means any and all materials, chemicals, or other substances defined as hazardous, hazardous waste, Regulated Substances or toxic waste, or otherwise regulated or controlled pursuant to any of the Environmental Laws.
- 1.1.27 **Owner** is defined in the first paragraph of this Agreement.
- 1.1.28 **Person** means any natural person, corporation, partnership, limited liability company, association, trust, other business entity or governmental unit.
- 1.1.29 **Project** means the design and construction of the new regional training institute and related improvements at Camp Rell, Niantic, Connecticut, pursuant to this Agreement, including the appendices hereto, as described in the Contract Documents.
- 1.1.30 **Project Manager** means the individual, as identified in Appendix D, or such individual successor, employed by the Owner and designated and authorized by the Commissioner, to represent the Owner for the purposes of this Agreement.
- 1.1.31 **Project Schedule** means the schedule for the completion of the design and construction of the Work, indicating proposed activity sequences and durations, milestone dates, and the dates of Substantial Completion and Acceptance. The Project Schedule shall be developed in accordance with Section 2.4 and is attached hereto as Appendix A.
- 1.1.32 **Refinement Documents** means meeting notes, drawings, sketches and other documentation developed and approved by the Owner and Design-Builder to clarify and refine Design-Builder's Proposal, all of which are now or shall hereafter be included or described in Appendix C.
- 1.1.33 **Regulated Substances** means any (a) chemical, substance, material, or waste that is designated, classified, or regulated as "hazardous waste," "hazardous material," "hazardous substance," "Connecticut regulated waste," "toxic substance," "radioactive material," "lead based paint or lead containing materials," or words of similar import, under any applicable Environmental Law; (b) petroleum, petroleum hydrocarbons, petroleum products, petroleum substances, crude oil, and components, fractions, derivatives, or by-products thereof; (c) asbestos or asbestos-containing material (regardless of whether in a friable or non-friable condition) or polychlorinated biphenyls; and (d) any substance that, whether by its nature or its use, is subject to regulation under any applicable Environmental Law then in effect or for which a governmental entity requires remedial action at the property or any areas emanating there from.
- 1.1.34 **Representatives** means a Person's affiliates, and its or their directors, members, managers, partners, officers, employees, agents, consultants and advisors, provided that the Design-Builder shall not constitute a Representative of the Owner.
- 1.1.35 **Request for Proposal or "RFP"** means the Request for Proposals, issued by the Owner, dated August 20, 2008, with respect to the Project and any Addenda thereto.
- 1.1.36 **Request for Qualifications or RFQ** means the Request for Qualifications issued by the Owner, dated July 4, 2007, with respect to the Project.
- 1.1.37 **Schedule of Values** means a document furnished by the Design-Builder to the Owner stating the portions of the Contract Price allocated to the various portions of the Work, which is to be used for reviewing the Design-Builder's applications for payment.
- 1.1.38 **Site** means lands or areas being furnished by the Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto.
- 1.1.39 **Specifications** means that part of the Contract Documents approved by the Owner consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
- 1.1.40 **Subcontractor** means any Person performing a portion of the Work or supplying materials or equipment for the Work pursuant to a direct contract with the Contractor.

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- 1.1.41 **Substantial Completion** is defined in Section 2.5 hereof.
- 1.1.42 **Substantial Completion Date** is defined in Section 2.3 hereof.
- 1.1.43 **Threshold Limit Building** means new structures or additions as defined in Section 29-276b, of the Connecticut General Statutes, as revised.
- 1.1.44 **Work** means the design, construction and other services required by the Contract Documents, and including all labor, materials, equipment, documentation and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations to design and construct the Project.

1.2 Interpretations

- 1.2.1 References to a "Section", "Sections", "Article", or "Articles" herein refer to this Agreement unless otherwise stated.
- 1.2.2 Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.
- 1.2.3 Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or index of schedules and exhibits appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- 1.2.4 Words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of this Agreement and not to any particular article, section, subsection, paragraph or clause hereof.
- 1.2.5 A reference to "including" means including without limiting the generality of any description proceeding such term.
- 1.2.6 Any reference to any statute, law or regulation includes all statutes, laws or regulations amending, consolidating or replacing the same from time to time, and a reference to a law or statute includes all regulations, codes or other rules issued or otherwise applicable under such law or statute unless otherwise expressly provided in such law or statute or in this Agreement. This rule of interpretation shall be applicable in all cases notwithstanding that in some cases specific references in this Agreement render the application of this rule unnecessary.
- 1.2.7 In determining the "reasonableness" of the granting or denial of any approval, consent, waiver, acceptance, or concurrence of any party hereto, the Owner shall be entitled to consider matters of public policy, as well as business and financial considerations.
- 1.2.8 All notices to be given hereunder shall be given in writing (whether or not so specified in a particular provision of this Agreement) within a reasonable time unless otherwise specifically provided.
- 1.2.9 Whenever any calculation or valuation may be made for any purposes hereunder and the method or manner of such calculation or valuation is not provided for in this Agreement, it shall be done in accordance with generally accepted accounting principles consistently applied or in such other manner as may be mutually agreed by the parties, unless otherwise required by Applicable Laws.
- 1.2.10 Each Exhibit, Appendix, and any other document referred to in this Agreement shall be considered a part of this Agreement as if fully set forth herein.

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ARTICLE 2 DATE OF COMMENCEMENT, SUBSTANTIAL COMPLETION ,AND ACCEPTANCE OF THE WORK

- 2.1 Date of Commencement** – The Date of Commencement of the Contract Time shall be as specified in a written Notice to Proceed issued to the Design-Builder by the Owner.
- 2.2 Contract Time** - The Contract Time shall be measured in Calendar Days from the Date of Commencement.
- 2.3 Substantial Completion Date** - The Design-Builder shall attain Substantial Completion of the Work not later than 1000 Calendar Days from the Date of Commencement.
- 2.4 Completion**
- 2.4.1** The Work to be performed under this Agreement shall be carried out by the Owner and the Design-Builder in accordance with the Project Schedule, and the Work shall be performed in accordance with the terms and conditions of this Agreement. TIME IS OF THE ESSENCE with respect to the obligations of Design-Builder hereunder.
- 2.4.2** Substantial Completion shall be accomplished no later than the Substantial Completion Date set forth above in Section 2.3. The Project Schedule, as it may be revised from time to time, shall be deemed to be a part of this Agreement, as if fully set forth herein. The Project Schedule shall be prepared and updated by Design-Builder, subject to the approval of the Owner. The Project Schedule shall set forth a detailed precedence-style, critical-path method format that (1) incorporates all critical dates for Substantial Completion; (2) provides a graphic representation of all significant activities and events that will occur during performance of the Work; (3) identifies each phase of design, construction, and occupancy; and (4) sets forth dates that are critical for ensuring the timely and orderly completion of the Work, in accordance with the requirements of this Agreement and Contract Documents and Construction Documents (hereinafter referred to as "Milestone Dates"). Milestones Dates must be clearly indicated and sequentially organized to identify the Critical Path. Design-Builder shall monitor the progress of the Work for conformance with the requirements of the Project Schedule, including, without limitation, specifically noting whether or not Milestone Dates are being met, and shall promptly advise the Owner of any delays or potential delays. The Project Schedule shall be updated monthly to reflect actual conditions versus the original Project Schedule (sometimes hereinafter referred to as "progress reports"), or on a more frequent basis if requested by the Owner. The Project Schedule shall be in Primavera Systems, Inc., Format, P3, as approved by the Owner (or such other format as the Owner shall request). An updated Project Schedule shall be submitted with each application for payment. No payment will be released until any revisions to the Project Schedule are reviewed and approved by the Owner in writing.
- 2.5 Substantial Completion.** "Substantial Completion" of the Project occurs when the progress of the Work is complete so that the Owner can occupy or utilize the Project for its intended use; when the following requirements have been satisfied, and the Owner issues a Certificate of Substantial Completion:
- 2.5.1** A certificate (or certificates) of occupancy or, at the sole discretion of the Owner, a temporary certificate (or certificates) of occupancy for all, or an Owner designated portion, of the Work has been issued by the appropriate governmental authority;
- 2.5.2** All required training programs are complete, and all maintenance agreements and final certificates are in effect;
- 2.5.3** All warranties, guarantees and bonds are in effect;
- 2.5.4** All lien waivers have been submitted for all Work completed and to be paid; and
- 2.5.5** A punch list has been established and approved by the Owner;
- 2.5.6** Submission of the Certificate of Compliance, Part 2, by Design-Builder, which certificate Design-Builder shall have prepared and delivered to the Owner, shall constitute a certification by Design-Builder that all Work has been performed in accordance with this

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Agreement, the Contract Documents, the Construction Documents and all Applicable Laws, and that all statements contained in the Certificate of Compliance are true and correct as of the date it is delivered to the Owner. Design-Builder shall give to the Owner at least a thirty (30) day advance notice of the submission of a Certificate of Compliance. The Owner shall be entitled to conclusively rely on the accuracy of the statements and information set forth in the Certificate of Compliance and provided therewith. See Section 6.2.14, **Certificate of Compliance**, for more information related to the Certificate of Compliance.

2.5.7 Upon Substantial Completion, the Owner shall indicate its general acceptance of the Work by dating and signing the Certificate of Substantial Completion in the form attached hereto as Appendix E.

2.6 Delay

If Design-Builder wishes an extension of the number of Calendar Days to attain Substantial Completion it shall give the Owner written notice within fourteen (14) Calendar Days of when the Design-Builder becomes aware or should have become aware of the act or occurrence which caused the delay. Such request shall be granted only by means of an Agreement Amendment and only in cases where either:

2.6.1 Force Majeure exists that warrants a change in the established Substantial Completion Date;

2.6.2 the Owner has failed to perform its obligations pursuant to Article 7, Owner's Responsibilities, Section 7.1, and such failure warrants a change in the established Substantial Completion Date, or

2.6.3 the Owner modifies the scope of Work or the number of Calendar days to attain Substantial Completion by an Agreement Amendment.

2.6.4 In the event the Work is delayed by Force Majeure, the performance of such Work, in the discretion of the Owner, may be excused for the period of the delay caused by such Force Majeure, and, with the written approval of the Owner, established Substantial Completion Date may be extended accordingly on a day for day basis. Each of the Design-Builder and the Owner shall promptly notify the other in writing if such party believes that such an event of Force Majeure has occurred, and again when such party believes such event has ceased. Any change in the Project Schedule shall be at no cost to the Owner and not subject the Owner to a delay claim.

2.7 Liquidated Damages – Substantial Completion:

If the Design-Builder shall fail to achieve Substantial Completion of the Work by the Substantial Completion Date, and such delay is not otherwise excused under this Agreement, then the Design-Builder does hereby agree, as a part consideration for the awarding of this Agreement, to pay to the Owner, as liquidated damages and not as a penalty, the sum of Five Hundred Dollars **(\$500.00)** per day for each Calendar Day beyond the Substantial Completion Date that the Design-Builder fails to achieve Substantial Completion. The parties to this Agreement acknowledge and agree that the actual damages that are to be expected as a result of the neglect, failure, or refusal of the Design-Builder to substantially complete the Project by the established Substantial Completion Date are uncertain in amount or extremely difficult to determine. Accordingly, the parties to this Agreement do intend and in fact now agree to liquidate damages in advance and stipulate that the amount set forth in this Section is reasonable and an appropriate remedy and is intended to constitute compensatory damages and does not constitute a penalty of any kind. The parties understand and agree that, by including a provision for liquidated damages in this Agreement, or in pursuing any relief pursuant to such provision:

2.7.1 the parties do not intend to set a price for the privilege not to perform;

2.7.2 the availability of liquidated damages may not be relied upon as a basis for argument that the Owner has an adequate remedy at law; and

2.7.3 the remedies available to the Owner under this Agreement are cumulative and not exclusive.

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2.8 Liquidated Damages – Post Substantial Completion:

If the Design-Builder shall fail to complete all of the Work required for Acceptance of the Work within ninety (90) Calendars Days of the actual Substantial Completion Date then the Design-Builder does hereby agree, as a part consideration for the awarding of this Agreement, to pay to the Owner, as liquidated damages and not as a penalty, the sum of Five Hundred Dollars (\$500.00) per day for each Calendar Day beyond the ninety (90) Calendars Days of the actual Substantial Completion Date until the Design Builder achieves Acceptance. The parties to this Agreement acknowledge and agree that the actual damages that are to be expected as a result of the failure of the Design-Builder to complete all of the Work required for Acceptance of the Work within ninety (90) Calendars Days of the actual Substantial Completion Date are uncertain in amount or extremely difficult to determine. Accordingly, the parties to this Agreement do intend and in fact now agree to liquidate damages in advance and stipulate that the amount set forth in this Section is reasonable and an appropriate remedy and is intended to constitute compensatory damages and does not constitute a penalty of any kind. The parties understand and agree that, by including a provision for liquidated damages in this Agreement, or in pursuing any relief pursuant to such provision:

2.8.1 the parties do not intend to set a price for the privilege not to perform;

2.8.2 the availability of liquidated damages may not be relied upon as a basis for argument that the Owner has an adequate remedy at law; and

2.8.3 the remedies available to the Owner under this Agreement are cumulative and not exclusive.

2.9 Acceptance of the Work:

Acceptance of the Work occurs when the Owner issues a Certificate of Acceptance to the Design-Builder in accordance with the requirements of Section 4-61(b)(2), Connecticut General Statutes as revised.

2.9.1 **Certificate of Acceptance:** The Certificate of Acceptance shall designate the Owner's and Design-Builder's responsibilities for completion of all incomplete Work, if any incomplete work remains, as required by the Agreement,

2.9.2 **Incomplete Work:** In those instances where the Design-Builder has failed to complete all of the Work required by this Agreement and all referenced documents, the State reserves the option to complete all or part of the incomplete Work as designated in the Certificate of Acceptance. The issuance of a Certificate of Acceptance is not a determination, or acknowledgement, or acceptance by the State of Connecticut of the following:

2.9.2.1 Incomplete Work as required by this Agreement;

2.9.2.2 Workmanship, warranty requirements or quality of the Work as required by this Agreement.

2.9.3 **Responsibility of Design-Builder** – Prior to Acceptance, the Design-Builder shall provide to the Owner evidence that (i) the Work has been performed as required by the Contract Documents; (ii) the conditions to payment specified in Article 5 of this Agreement and the RFP are satisfied and, in particular, that all payrolls, materials, bills and other indebtedness of Design-Builder and any Contractor, Subcontractor and Design Professional relating to the Project have been paid or otherwise satisfied; (iii) all appropriate lien waivers have been obtained; and (iv) any notice of lien previously filed has been discharged and released on the land records. At Acceptance, any interest of Design-Builder or any other Person in the Work will be transferred to the Owner free and clear of all liens, encumbrances, conditions, restrictions and claims. At Acceptance, and before final payment, which when added to all previous progress payments will equal the contract Price, Design-Builder will provide or cause to be provided all warranties, guarantees, bonds, and documents necessary to convey to the Owner any interest of Design-Builder or any other Person in the Work.

2.9.4 **Notification** – At Design-Builder's request and upon satisfaction of the conditions specified in Section 2.9, the Owner shall notify Design-Builder of Acceptance.

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ARTICLE 3 CONTRACT PRICE

- 3.1 The "Contract Price" is Twenty-seven Million Five Hundred Thousand Dollars and No Cents (\$27,500,000.00) and represents the price to be paid by the Owner to the Design-Builder for the Project on a total cost basis when complete and accepted by the Owner. The Contract Price shall be paid in accordance with Article 5, PAYMENTS TO DESIGN-BUILDER. Changes in the Contract Price may only be increased or decreased by an Agreement Amendment. The Contract Price includes the costs, fees, and expenses of the Project and the performance by Design-Builder of all of its duties and obligations pursuant to this Agreement with respect to the Project.
- 3.2 **Allocation of Risks Included**
Except as otherwise expressly provided in this Agreement, the Contract Price takes into account all risks whatsoever relating to the Project, surface and subsurface conditions including but not limited to, soil, utility conflicts, design, architectural, engineering, demolition, construction, and delay risks.
- 3.3 **Delay.** The Design-Builder shall not be entitled to an increase in the Contract Price for delay due to Owner ordered modifications or any other circumstances for the period of time between the Design-Builder's earlier completion of the Work and the Substantial Completion Date. Excluded costs include, but are not limited to, delay claims for extended home or field office costs and supervisory and management costs incurred in the performance of the Work. Early completion of the Work shall not merit additional compensation. The Design-Builder acknowledges that the Contract Price includes and anticipates any and all delays, whether avoidable or unavoidable, from orders which may issue from any court, governmental agency or Force Majeure, and that such delays shall not, under any circumstances, be construed as compensable delays. No damages for delay or time extensions will be granted, even if Owner approvals deviate from the Project Schedule.

ARTICLE 4 CHANGES IN THE WORK

4.1 Agreement Amendments

Any changes in the Terms and Conditions of this Agreement or in the Work resulting in an adjustment in the Contract Price or Substantial Completion Date shall be memorialized in an Agreement Amendment. Each Agreement Amendment shall specify any change in the Contract Price, Project Schedule or Substantial Completion Date and will not be effective until execution by the Owner and Design-Builder, and approved by the State Properties Review Board and the Office of the Attorney General in writing.

4.1.1 Each Agreement Amendment shall specify any change in the following:

- 4.1.1.1 a change in the Work;
- 4.1.1.2 the amount of the adjustment, if any, in the Contract Price;
- 4.1.1.3 the extent of the adjustment, if any, in the Contract Time.

4.2 Agreement Amendment Required.

Except for Clarifications, or as may be otherwise expressly provided in this Agreement, neither the Design-Builder nor the Owner will make any changes to the Project or with respect to the Work except under an executed Agreement Amendment.

4.3 Payment.

Any changes in the Contract Price resulting from an Agreement Amendment shall be adjusted upon submittal of an Application For Payment by the Design-Builder in the manner prescribed under Article 5.

ARTICLE 5 PAYMENTS TO DESIGN-BUILDER

5.1 Payments

5.1.1 The Owner will make progress payments to Design-Builder in accordance with the

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General Conditions. Retainage, as defined in the RFP, will be calculated at ten percent (10%) of the cost of the Work as set forth in each Application for Payment. Retainage will be released and paid to Design-Builder by the Owner upon satisfaction of the requirements for final payment stated in the RFP. The cost of the Design Professional's services and the cost of permits and approvals will not be subject to Retainage. The Design-Builder shall be required to separately account on each Application for Payment the fee of the Design Professional with the percentage of completion for the phase of design being invoiced at that time.

5.1.2 Notwithstanding any provisions in this Agreement to the contrary, the Owner shall have the sole discretion to reduce the Retainage from ten percent (10%) to five percent (5%). The decision of the Owner to reduce the Retainage percentage will be based upon, but shall not be limited to, the following:

5.1.2.1 The Design-Builder's timely submission of an appropriate and complete Project Schedule and Schedule of Values in compliance with this Agreement. Attached hereto as Appendix F is a Preliminary Schedule of Values that will be revised as set forth in the General Conditions.

5.1.2.2 The Design-Builder's timely and proper submission of all submissions required by the Contract Documents including, but not limited to, shop drawings, material certificates and material samples and the prompt resolution of the Owner's comments on the submitted material.

5.1.2.3 The Design-Builder's provision of proper and adequate supervision and home office support of the Project and any Contractor or Subcontractor Work resulting in coordinated progress and proper quality control for the Work.

5.1.2.4 The Work completed to date has been installed or finished in an acceptable manner that is satisfactory to the Owner.

5.1.2.5 The progress of the Work is consistent with the Project Schedule.

5.2 **Title to Work.** Prior to Acceptance, title to the Work shall pass to the Owner upon acceptance of the Work and payment having been made to Design-Builder in accordance with Sections 5.1 and 5.4 of this Agreement. At Acceptance, title to the balance of the Work shall pass to the Owner in accordance with this Agreement.

5.3 **Lien Waivers.** Lien waiver certificates, in a form and substance satisfactory to the Owner, shall be submitted by Design-Builder with all progress payment requests certifying that the Project is free and clear of all liens and any other encumbrance for all Work completed to the extent of payments received by Design-Builder to date. Final Lien waivers shall be provided by Design-Builder at Acceptance in a form and substance satisfactory to enable the title insurance company providing the policy of title insurance for the Project to issue appropriate endorsements that, upon completion of the Project by Design-Builder and acceptance and occupancy of the Project by the Owner, the property is free and clear of all vendors, mechanics', laborers', material men's, or other similar liens based on furnishing materials or labor to the Project. If, as a result of any Work, the Project or any part thereof shall become subject to any such vendors', mechanics', laborers', material men's, or other similar liens, Design-Builder shall cause the same to be discharged and released on the land records at its sole cost and expense prior to Substantial Completion, or if such a lien is not filed until after Substantial Completion, then within seven (7) Calendar Days after Design-Builder becomes aware of the lien(s). If a Contractor or Subcontractor refuses to furnish a release or lien waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall discharge such lien promptly upon demand of the Owner. If Design-Builder shall fail to discharge such lien within thirty (30) days of such demand, the Owner may take steps as are necessary or appropriate to discharge such lien and Design-Builder shall immediately upon demand pay to the Owner all money that the Owner is compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

5.4 **Acceptance and Review of Work**

5.4.1 Design-Builder shall submit to the Owner the documents set forth in the General Conditions

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as a condition for receiving any progress payments.

- 5.4.2 Notwithstanding any other provision in this Agreement, the Owner may, at any time and from time to time, deliver notice to the Design-Builder rejecting any portion or all of the Work performed or caused to be performed by the Design-Builder and not in accordance with the requirements of the Contract Documents and General Conditions.
- 5.4.3 Design-Builder shall promptly correct Work rejected by the Owner, whether or not fabricated, installed, or completed in accordance with the requirements of the Contract Documents and / or General Conditions. Design-Builder shall bear the costs of correcting such rejected Work, including additional testing and inspections and compensation for any additional architectural design and/or engineering services and expenses made necessary thereby. Similarly, Design-Builder shall bear the cost of correcting destroyed or damaged Work caused by Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

ARTICLE 6 DESIGN-BUILDER'S RESPONSIBILITIES

6.1 General Representations and Warranties of Design-Builder

- 6.1.1 The Design-Builder represents and warrants that it is an independent contractor, competent, knowledgeable, and familiar with the type of work contemplated by this Agreement. The Design-Builder agrees and understands that neither it nor any of its Representatives may act in the name of the Owner except and unless specifically authorized in writing by the Owner to do so. The Design-Builder further represents and warrants that it accepts a fiduciary role and responsibility with respect to the Owner and that it owes the Owner the duties of good faith, trust, confidence, and candor. The Design-Builder will, to its best abilities, act in the best interests of the Owner in accomplishing the timely completion of the Work. The Design-Builder shall furnish project management, design, and construction administration and construction services and use the Design-Builder's best efforts to perform the Project in an expeditious manner consistent with the interests of the Owner.
- 6.1.2 Design-Builder represents and warrants that it has, as a part of its business organization or in its employ or under contract, the following:
 - 6.1.2.1 project management staff with the professional competency and skills to provide administrative, cost control, budget control, and scheduling services for the Project;
 - 6.1.2.2 Design Professionals with the professional experience, learning, skill, ability and competency as is ordinarily possessed by other members of its profession, including all required licenses and registrations in the State of Connecticut to design the Project and provide all design related services; and
 - 6.1.2.3 Contractors with the competency, skills and all required licenses in the State of Connecticut to construct the Project in accordance with the Contract Documents and Construction Documents.
- 6.1.3 Design-Builder represents, acknowledges, and warrants good and marketable title to and ownership of all the Work, whether incorporated in the Project or held in storage on or off the Site, and that immediately upon any part of the Work being completed and paid for in accordance with this Agreement, such title shall vest in the Owner.
- 6.1.4 Design-Builder represents and warrants that it has taken such steps as it has deemed necessary to ascertain the nature and location of the Project and the general and local conditions that affect the Project or the cost thereof, and has examined the Site, and the obstacles that may be encountered and all other conditions having a bearing upon the performance of the Project.
- 6.1.5 Design-Builder represents, warrants and covenants as follows:

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- 6.1.5.1 it is an entity duly organized and validly existing under the laws of the state of its organization with full power and authority to conduct its business as presently conducted and as contemplated by this Agreement, and to enter into and perform its obligations under this Agreement;
- 6.1.5.2 neither the organizational documents of Design-Builder or any Applicable Laws in any way prohibit, limit or otherwise affect the right or power of Design-Builder to enter into and perform all of the terms and conditions of this Agreement and the Contract Documents and to consummate the transactions contemplated thereby, and Design-Builder is not a party to or bound by any material contract, agreement, indenture, trust agreement, note, obligation or other instrument which would prohibit or limit the same. No consent, authorization or approval of, or other action by, and no notice to or filing with any governmental agency or other person is required for the proper execution, delivery and performance by Design-Builder of this Agreement or any of the Contract Documents or the consummation of any of the transactions contemplated thereby, except for such approvals as have already been obtained;
- 6.1.5.3 the execution and delivery of this Agreement by Design-Builder has been duly and validly authorized by all necessary action. This Agreement is a legal, valid and binding obligation of Design-Builder, enforceable against Design-Builder in accordance with its terms; and
- 6.1.5.4 Design-Builder shall maintain financial resources, including contributed or accumulated capital, sufficient to meet its obligations, including its obligations under this Agreement, as the same become due.

6.2 General Duties

- 6.2.1 Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for all professional services, labor, materials, equipment, transportation, construction, resources, work, and services necessary or incidental to completing the Work in a proper and timely manner in accordance with the Contract Documents and Applicable Laws.
- 6.2.2 The Design-Builder shall supervise and direct the Work using diligent skill and attention. The Design-Builder shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures.
- 6.2.3 The Design-Builder shall at all times enforce strict discipline and good order among its Contractors, Subcontractors and Design Professional performing the Work, and shall not employ or permit the employment of unfit persons or persons not skilled in the task assigned to them.
- 6.2.4 Where work is required within a specially secured controlled access environment, work shall be performed by personnel who have passed a security screening.
- 6.2.5 The Design-Builder is responsible to the Owner for the acts and omissions of the Design Professional, the Contractor, Subcontractors, and their respective Representatives and for any other of its own Representatives and other Persons under its control and direction.
- 6.2.6 Design-Builder shall not use or occupy the Project or the property where the Project is located contrary to any statute, rule, order, ordinance, requirement, or regulation applicable thereto, or in any manner that would cause the value or the usefulness of the Project to be diminished or would cause a public nuisance or waste or contamination of the site.
- 6.2.7 Design-Builder agrees for itself and shall require each of its Contractors, Subcontractors and Design Professional to maintain complete accounting records and controls (including detailed support for all cost allocations), on an "open book basis" whereby, during normal business hours, the Owner, the Project Manager, the Owner's independent auditor, the Comptroller of the State of Connecticut and the Auditors of Public Accounts can review, copy, verify and audit all records and other financial data relating to the Project and the allocation of costs and expenses between the parties, or for any proper purpose, including verification of performance pursuant to this Agreement and the other Contract Documents, and compliance

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with Applicable Laws. Arrangements shall be made for access to and providing of all such records and data stored in electronic form. Without limiting the immediately preceding sentence, Design-Builder shall maintain and make available to the Auditors of Public Accounts all books and records required in order for the Auditors of Public Accounts to perform the duties and functions assigned to the Auditors of Public Accounts pursuant to Chapter 23 of the Connecticut General Statutes. Design-Builder shall preserve all such records for a period of not less than seven (7) years after the final payment of the Contract Price due hereunder or longer if required by Applicable Law.

- 6.2.8** The Design-Builder, promptly and in accordance with time limits set by the Owner, shall answer the Construction Administrator's and the Project Manager's questions and provide the Construction Administrator and the Project Manager with the requested Project information.
- 6.2.9** The Design-Builder shall advise and assist the Owner with the preparation of all applications for permits or utilities or other matters necessary for the construction and operation of the Project and which matters are the responsibility of the Owner pursuant to the RFP. See Volume #1, Section 00 24 19.1 Project Information as set forth in the RFP for additional detail for this Project.
- 6.2.10** The Design-Builder shall provide to the Project Manager a list of contractors, and vendors whose services may be required in the purchasing of materials and services for the Work.
- 6.2.11** The Design-Builder shall work with the Project Manager to develop a procedure for the submission of the design documents prepared by the Design Professional for the review of the Owner. See Volume #1, Section 00 24 19.1 Project Information and Section 01 00 00.1 General Requirements as set forth in the RFP for additional detail for this Project.
- 6.2.12** Design-Builder acknowledges and represents that it has received and completely reviewed the RFP, any Addenda, Refinement Documents, Applicable Laws and other requirements of the Owner with respect to the Project and any modifications thereto as agreed to by the Owner and Design Builder in writing and that all Work shall be performed in accordance with the Applicable Laws.
- 6.2.13** The Design-Builder shall submit for review by the Owner a Project Schedule within sixty (60) days after the date of this Agreement, utilizing a full-featured software package in a form satisfactory to the Construction Administrator and the Owner, showing milestone dates for receipt and approval of pertinent information relative to design, dates of design coordination meetings, preparation and processing of shop drawings and samples, and delivery of materials or equipment requiring long lead-time procurement, the Owner's occupancy requirements showing portions of the Project having occupancy priority, and the dates of Substantial Completion and Acceptance. It should also include the dates for commencement of the Work, including the coordination of mechanical, plumbing, and electrical disciplines, as well as coordination of the various subdivisions of the Work within the Contract Documents. Milestones must be clearly indicated and sequentially organized to identify the Critical Path. The Design-Builder shall provide the Construction Administrator and the Project Manager with monthly updates of the Project Schedule indicating complete activities and any changes in sequencing or activity durations, including Clarifications, provided that in no event shall the Substantial Completion Date be extended except as expressly provided herein.
- 6.2.14 Certificate of Compliance**
- 6.2.14.1** For Threshold Limit Buildings, the Design-Builder shall complete and submit PART 1 of the Certificate of Compliance with the tracings and masters to the Owner and certify that the documents have been designed in accordance with the current and applicable building and fire safety codes. Prior to occupancy of the building, the Design-Builder shall complete and submit PART 2 of the Certificate of Compliance to the Owner. The Commissioner of the Department of Public Works is not required to sign the Certificate of Compliance for buildings that equal or exceed the threshold limit as defined in Section 29-276b of the Connecticut General Statutes.
- 6.2.14.2** For Non-Threshold Limit Buildings, the Design-Builder shall complete and submit PART 1 of the Certificate of Compliance with the tracings and masters to the Owner and certify that the documents have been designed in accordance with the

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current codes. Prior to occupancy of the building, the Design-Builder shall complete and submit PART 2 of the Certificate of Compliance to the Project Manager.

6.3 Design Responsibilities

- 6.3.1** Design-Builder shall furnish all the design, architectural and engineering services, surveying services, and permitting including, but not limited to, testing, subsurface borings, and geotechnical data, necessary to prepare and furnish Drawings and Specifications required to complete the Work. The Design-Builder has examined the Site and has determined that the Site meets all requirements for development of the Project including, but not limited to, those related to public utilities such as electric, telephone, storm, sewer, water, etc.; and has concluded that there will be no claims for Site conditions above and below grade level.
- 6.3.2** Design-Builder shall provide the design of the Project, taking into account the needs and objectives of the Owner as set forth in this Agreement. In the event that peer review is required, the Design-Builder is responsible for insuring the coordination of the design with the Owner. Design-Builder shall provide the necessary Construction Documents as required for the Project in accordance with all Applicable Laws.
- 6.3.3** The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design development documents and Construction Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder, but in any event the Owner shall have no less than fourteen (14) business days for each such review. The Owner's review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the sole responsibility of the Design-Builder as required by the Contract Documents.
- 6.3.4** Upon review of the design development documents, Construction Documents, or other submittals required by the Contract Documents, the Owner shall take one of the following actions:
- 6.3.4.1** Determine that the documents or submittals are in conformance with the Contract Documents and approve them.
 - 6.3.4.2** Determine that the documents or submittals are not in conformity with the Contract Documents and reject them.
 - 6.3.4.3** Determine that the documents or submittals are not in conformity with the Contract Documents but accept them and request changes in the documents or submittals, without additional compensation or Contract Time for the Design-Builder, which shall be implemented by an Agreement Amendment.
- 6.3.5** Approval by the Owner shall not relieve Design-Builder of responsibility for any error, inconsistency, defect or omission in the design, Drawings or Specifications for the Project, including those relating to the Americans with Disabilities Act. If such error, inconsistency, defect or omission is discovered, Design-Builder shall revise all appropriate Drawings, Specifications, and other design documents to correct such error, inconsistency, defect or omission and immediately upon becoming so aware, shall change, alter, and modify the Project accordingly, all with no time extension and at no cost to the Owner. The Owner shall have no obligation to investigate for the purpose of becoming aware of any such error, inconsistency, defect or omission.
- 6.3.6** The Design-Builder shall integrate the design time into the Project Schedule. The Design-Builder shall monitor the Design Professional's compliance with the Project Schedule and shall coordinate and expedite the flow of information between the Owner, the Design Professional, and the Construction Administrator. The Design-Builder shall be responsible to the Owner for ensuring that the Construction Documents prepared by the Design Professional are consistent with all Project needs and requirements, including as to constructability, scheduling, time of construction, clarity, consistency, cost, and coordination

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of documentation.

- 6.3.7 It is the responsibility of the Design-Builder to provide Construction Documents that conform to applicable building codes, zoning codes, laws, regulations and generally accepted construction industry standards. The Design Professional shall affix its signature, date, and seal to the Construction Documents in accordance with the requirements of the State of Connecticut. The Design Professional shall insert the following statement on the cover sheet of the Drawings.

To the best of my knowledge, information and belief, the plans, specifications and addenda comply with the applicable building codes.

- 6.3.8 The Design-Builder warrants to the Owner that its design is provided for the Project consistent with sound design principles commonly used by design professionals under similar circumstances, and the resulting design is constructible by a qualified contractor using appropriate construction methods.

6.4 Construction Responsibilities

- 6.4.1 Except as may otherwise be provided in the Contract Documents for those responsibilities set forth in Article 7 Owners Responsibilities hereof, which the Owner has agreed to undertake, the Design-Builder shall execute all Work and assume all responsibilities in regard to the construction of the Project and performance of the Work including, without limitation, (i) obtaining and paying for all utility services, utility charges and sewer charges required for construction of the Project; (ii) obtaining and paying for all necessary authorizations, permits, and approvals required for construction and occupancy of the Project including, without limitation, all Certificates of Occupancy and the Certificate of Substantial Completion ; (iii) satisfying all quality control, testing and inspections, record keeping, and reporting requirements; (iv) preparing, maintaining, and furnishing all Construction Documents and Clarifications; and (v) making available appropriate Representatives to attend regular progress meetings with the Owner, the Contract Administrator and other Persons identified by the Owner. Design-Builder shall also assume all incidental and related responsibilities applicable to the foregoing which may not be specifically enumerated in the Contract Documents.
- 6.4.2 Design-Builder, using its best skill and attention, will provide or cause to be provided all construction, construction supervision, inspection, labor, materials (including spare parts), tools (including any special tools that may be necessary and appropriate to complete the Project), construction equipment and subcontracted items necessary for the execution and completion of the Project and the Work in accordance with the provisions of this Agreement, the Contract Documents, and all Applicable Laws. Subject to the terms of this Agreement, Design-Builder shall be solely responsible for and shall have sole control over the means and methods of design and construction, including techniques, sequences, and procedures for coordinating all portions of the Work.
- 6.4.3 Unless otherwise specified in writing by Owner, all materials shall be new, and both workmanship and materials shall be of good quality. The Design-Builder shall, if required, furnish satisfactory evidence as to the kind and quality of materials and work.
- 6.4.4 The Design-Builder shall maintain during the progress of the Work a competent project executive and any necessary assistants, all satisfactory to the Owner. The project executive shall not be changed except with the consent of the Owner unless the project executive proves to be unsatisfactory to the Design-Builder or otherwise ceases to be in its employ. The project executive represents the Design-Builder and all directions given to the project executive shall be as binding as if given to the Design-Builder. If the Design-Builder terminates the project executive or, if the Design-Builder, for any reason, engages a project executive different from the one originally assigned to the Project, Design-Builder must ensure that the replacement project executive has equivalent or better qualifications and experience as the original project executive. Furthermore, the Design-Builder must obtain the Owner's prior written approval before engaging a permanent replacement project executive.
- 6.4.5 Design-Builder shall require Contractors, Subcontractors and Design Professionals and suppliers to employ and assign to the Work, at all times, sufficient staff and personnel to

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perform their services in a skilled, professional, and satisfactory manner so as not to delay the progress of the Work.

- 6.4.6** The Design-Builder shall schedule and conduct regular meetings, or as requested by the Owner, with the Owner, Construction Administrator, and appropriate Contractors, Subcontractors and Design Professional, for the purpose of discussing the progress of the design, status and progress of the Work, and other matters of coordination. The Design-Builder shall: (i) schedule regular biweekly (unless requested more frequently by the Owner) design and construction coordination meetings with all appropriate parties, including the Owner; and (ii) promptly issue reports and minutes of all such meetings in a format acceptable to the Owner, including therein a list of the action items, responsible parties, and action dates to maintain schedules.
- 6.4.7** Design-Builder shall submit written progress reports monthly to the Owner and the Construction Administrator, including information on the percentage of completion; and maintain a daily log, approved as to form and type of entries by the Construction Administrator, which log shall be accessible to the Owner for inspection and copying at all times during normal business hours.
- 6.4.8** The Design-Builder shall be responsible for coordinating all portions of the Work under this Contract. Design-Builder shall be responsible for construction means, methods, techniques, sequences, and procedures, as well as for safety precautions and programs in connection with the Work. Design-Builder shall perform the foregoing activities in compliance with the Contract Documents. Design-Builder shall coordinate and develop for Contractors and Subcontractors procedures for (i) preparation, review, and processing of Clarifications; (ii) reviewing requests for changes by the Owner, Contractors or Subcontractors; (iii) submitting recommendations to the Owner and the Construction Administrator with respect to proposed Clarifications; and (iv) implementing Clarifications as approved by the Owner.
- 6.4.9** In constructing the Project, Design-Builder shall provide all facilities and shall follow all procedures required by the Occupational Safety and Health Act ("OSHA") including, but not limited to, providing and posting all required posters and notices, and shall otherwise be responsible for compliance with all other mandatory safety laws, regulations and rules.
- 6.4.10** Design-Builder shall achieve Substantial Completion of the Project not later than the Substantial Completion Date and shall achieve Acceptance not later than the Acceptance Date set forth in the Project Schedule.
- 6.4.11** If at any time during construction of the Project, Design-Builder discovers any Hazardous Materials not previously described in the Contract Documents in, at, on, or under the Site, Design-Builder shall in no way move, disturb, or remediate the Hazardous Materials. Instead, Design-Builder shall immediately notify the Owner of the presence of the Hazardous Materials. The Owner, at its option, may test, remove, or remediate the condition. Design-Builder shall do and perform all things that are necessary or appropriate to facilitate the remediation, if any, of the Hazardous Materials by the Owner or any of its Representatives. If as a result of following the procedures in this subsection there is a delay on the Critical Path of the Project Schedule as determined by the Owner, then Design-Builder may, in the discretion of the Owner, receive an appropriate extension of time in the Project Schedule to accommodate the delay.
- 6.4.12** To ensure the proper execution of the Work, the Design-Builder shall monitor Work already in place and shall at once report to the Owner and the Construction Administrator any material discrepancy between the executed Work and the Drawings or Specifications.
- 6.4.13** Prior to Acceptance of the Work and Final Application for Payment, Design-Builder will pay all applicable costs and expenses, if any, relating to the Work and all costs relating to the performance of its responsibilities pursuant to all of the terms and conditions of this Agreement and the Contract Documents including, without limitation, all fees, assessments and other charges payable as a condition to obtaining utilities, permits and approvals.
- 6.4.14** Wages paid by Design-Builder, Contractor or Subcontractors shall be in accordance with the provisions of Section 31-53 of the Connecticut General Statutes, as amended, which provides

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in part, the following:

The wages paid on an hourly basis to any mechanic, laborer or workman employed upon the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (h) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such employees to any such employee welfare fund shall pay to each employee as part of his wages the amount of payment or contribution for his classification on each payday.

- 6.4.15 Except as otherwise expressly provided in this Agreement, Design-Builder assumes all design, architectural, engineering and construction delay and other risks relating to the Project in accordance with this Agreement.
- 6.4.16 The Owner, the Construction Administrator, and any other Person designated by the Owner shall at all times have access to the Site.
- 6.4.17 On or before the execution of this Agreement, Design-Builder shall submit an executed payment and performance bond in the amount of 100% of the Contract Price, such bond to be provided by a surety approved by the Owner and in a form acceptable to the Owner. The bonds shall name the Owner as obligee.
- 6.4.18 Design-Builder will be responsible for the initial start-up and all testing required to provide complete and operational utilities, equipment, and systems, and to coordinate start-up and testing schedules in order to accommodate the Owner personnel who may want to observe. Design-Builder shall cause to create and implement a training program for the Owner Representatives responsible for the ongoing operations of the facility. Such program will include, but not be limited to, instruction in the operation and maintenance of the electrical, mechanical, plumbing, HVAC, conveyance, security, life safety and other systems. Such program will be completed prior to submission of a Certificate of Substantial Completion by Design-Builder to the Owner.
- 6.4.19 Prior to Acceptance, Design-Builder shall provide to the Owner, or cause to be provided, Construction Documents, photographic documentation of all systems installations, including, but not limited to, electrical, mechanical, fire suppression, and plumbing systems, and "As Built" drawings certified as complete, accurate, and current by the Design Professional, on diskettes, in a CADD system file format approved by the Owner. Design-Builder shall assign, convey or otherwise transfer, or cause the assignment, conveyance or transfer of the right, title, ownership, and interest in and to said "As Built" drawings to the Owner at Acceptance.
- 6.4.20 An A-2 Property Survey and a T-2 Topographic Survey of the Site, prepared and certified by a licensed land surveyor in the State of Connecticut shall be delivered to the Owner no later than the Acceptance Date.

6.5 Design-Builder Warranties.

- 6.5.1 Design-Builder warrants to the Owner that the Project, including all materials and equipment, will be designed and constructed in a good and workmanlike fashion and in accordance with the terms and conditions of this Agreement and the Contract Documents, and that the Project, including all materials and equipment, will be free of any defects, including, without limitation, design, architectural, structural, or mechanical defects for a period of twenty-four (24) months from the Substantial Completion Date, unless otherwise provided in this Agreement, including, but not limited to the RFP. The warranties provided in this Agreement shall be limited as to duration as provided herein, or in the General Conditions or in the General Requirements, or to such longer period as provided by material and equipment manufacturers or as may be required by Applicable Laws. Without limiting any other remedies that may be available to the Owner in the event of any breach of any such warranties, Design-Builder promptly after receipt of notice from the Owner, and immediately in the event of an emergency, shall repair, replace, or correct all Work performed under this Agreement by Design-Builder, or any Contractor or Subcontractor that proves to be defective in design, engineering, architecture, material, or workmanship, or otherwise not in compliance with Contract Documents.

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- 6.5.2 Warranties called for by this Agreement shall commence upon Substantial Completion of the Project. Design-Builder's obligations under this Section shall survive termination or expiration of the Agreement and shall be in force for the periods prescribed above. Upon Substantial Completion Date, Design-Builder will obtain, collect and deliver to the Owner all written warranties, guarantees, equipment, operating and maintenance manuals, specifications, and other such data in its possession relating to the Project and required by the Contract Documents. All warranties and guarantees relating to the Project from manufacturers and suppliers of mechanical and other equipment located in the Project shall be made out to the Owner or shall be assigned to the Owner upon Substantial Completion.

ARTICLE 7 OWNER'S RESPONSIBILITIES

- 7.1 The Owner shall timely perform all obligations assigned to it in accordance with Project Schedule consistent with applicable statutory requirements.
- 7.2 In accordance with the Contract Documents, the Owner shall timely submit, review, or approve such other items as may occur or be required in the course of the Work, to avoid delays in the commencement, continuance, or completion of the Work.
- 7.3 The Owner shall pay its pro rata share of charges for utilities incurred by reason of the Owner occupying any portion of the Project prior to Substantial Completion and after receipt of a temporary Certificate of Occupancy allowing such occupancy. If these utilities are not separately metered, Design-Builder and the Owner shall equitably adjust all such utility bills so that Design-Builder and the Owner each pay their fair share of each bill.
- 7.4 If the Owner has actual knowledge of any fault or defect in the Project or nonconformance with the Construction Documents, it shall give written notice and a reasonable opportunity to cure the condition to Design-Builder prior to declaring a default in performance by Design-Builder; provided, however, that any failure by the Owner to do so shall not relieve Design-Builder from any of its obligations pursuant to this Agreement.

ARTICLE 8 CONTRACTORS AND SUBCONTRACTORS

- 8.1 **Contracts Required**
All portions of the Work that the Design-Builder is to perform pursuant to this Agreement that Design-Builder does not perform with its own forces shall be performed under contracts with Contractors or Subcontractors, and all materials and equipment not supplied directly by Design-Builder shall be supplied under contracts with Contractors or Subcontractors.
- 8.2 **Privity.**
No contractual relationship shall exist by reason of this Agreement between the Owner and any Contractor, Subcontractor and Design Professional. Design-Builder shall have sole responsibility for the management of Contractors, Subcontractors and Design Professional and suppliers to them in the performance of the Work. Any communication the Owner desires to direct to a Contractor or Subcontractor shall be directed through Design-Builder who shall deliver all such communications with reasonable promptness. Notwithstanding the above, the Owner shall not be prohibited from communicating directly with a Contractor, Subcontractor, or Design Professional with whom the Owner is in privity of contract with on other projects.
- 8.3 **Subcontracts Assignable.**
All subcontracts shall by their terms be assignable to the Owner and its successors and assigns if the Design-Builder is in breach of this Agreement, and shall contain such terms as are required under the Contract Documents and be subject to the terms of this Agreement. The Design-Builder shall assign any or all of these subcontracts to the Owner, at the Owner's sole option, upon the Owner's request after termination of this Agreement pursuant to Article 10 Termination.

ARTICLE 9 INDEMNITY AND INSURANCE

- 9.1 **Indemnity**
Design-Builder shall indemnify, defend and hold harmless the Owner and its officers, employees and

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agents and legal representatives, successors and assigns from and against all

- 9.1.1 actions, suits, claims, investigations, or legal or administrative or arbitration proceedings pending or threatened, whether at law, in equity or otherwise, in any forum (collectively, "Claims") arising directly or indirectly from or in connection with this Agreement including, but not limited to, acts of commission, omission, or misconduct (collectively, the "Acts") by Design-Builder or any of their respective Representatives (collectively, "Design-Builder's Parties");
- 9.1.2 liabilities arising under this Agreement directly or indirectly out of Design-Builder's or Design-Builder Parties' acts concerning its or their duties and obligations as set forth in this Agreement; and
- 9.1.3 damages, losses, costs and expenses, including, but not limited to, attorneys' and other professionals' fees, that may arise out of such Claims and/or liabilities for bodily injury, death and/or property damage; provided that Design-Builder shall not be responsible for indemnifying or holding the Owner harmless from any claims or liabilities arising solely out of the grossly negligent acts or omissions, or willful misconduct, of the Owner.
- 9.1.4 Nothing contained in this Section 9.1, Indemnity shall reduce, avoid, or eliminate Design-Builder's warranty obligations under this Agreement or Applicable Law.
- 9.1.5 The terms of this Section 9.1, Indemnity shall survive Acceptance of the Work and/or termination of this Agreement indefinitely.

9.2 Design-Builder's Insurance

9.2.1 The Design-Builder shall not commence the Work until it has obtained insurance as stated below and such insurance has been approved by the Owner. The Design-Builder shall not allow any Contractor or Subcontractor to start Work until the same insurance has been obtained by the Contractor or Subcontractor and approved by the Owner, or, in the alternative, the Design-Builder's insurance provides coverage on behalf of the Contractor or Subcontractor. Notwithstanding the above, the Subcontractors shall not be required to provide Owner's and Contractor's Protective Liability insurance, Builder's Risk Insurance, and Inland Marine/Transit Insurance. The Design/Builder shall send Certificates of Insurance to the Department of Public Works, Legal Unit, Room 437, 165 Capitol Avenue, Hartford, CT 06106, unless otherwise directed in writing. Presented below is a narrative summary of the insurance coverage required.

9.2.1.1 Workers' Compensation And Employer's Liability:

Workers' Compensation And Employer's Liability as required by Connecticut State statutes and employers' liability with a limit of not less than \$100,000 per occurrence, \$500,000 disease policy limit, and \$100,000 disease each employee. When Work is on or contiguous to navigable waters of the U.S., the Design-Builder shall include an endorsement for U.S. Longshore and Harbor Workers' Compensation Act insurance coverage. (33 USC 901 et. seq.)

9.2.1.2 Commercial General Liability:

Commercial General Liability insurance including contractual liability, products/completed operations, broad form property damage and independent contractors. The limits shall be no less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. Coverage for hazards of explosion, collapse, and underground subsidence (X-C-U) and for asbestos abatement when applicable to this D-B Agreement must also be included when applicable to the Work to be performed. Products and completed operations insurance shall be maintained for a period of three (3) years after Substantial Completion. The State of Connecticut shall be named as an additional insured, including for both ongoing and completed operations. This coverage shall be provided on a primary basis.

9.2.1.3 Owner's And Contractor's Protective Liability:

Owner's And Contractor's Protective Liability insurance providing a total limit of \$1,000,000 for all damages arising out of bodily injury or death of persons in any one accident or occurrence and for all damages arising out of injury or

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destruction of property in any one accident or occurrence and subject to a total (aggregate) limit of \$2,000,000 for all damages arising out of bodily injury to or death of persons in all accidents or occurrences and out of injury to or destruction of property during the policy period. This coverage shall be for and in the name of the State of Connecticut.

9.2.1.4 Automobile Liability:

The operation of all motor vehicles including those owned, non-owned, and hired or used in connection with the Project shall be covered by motor vehicle liability insurance providing for a total limit of \$1,000,000 for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence and for all damages arising out of injury to or destruction of property in any one accident or occurrence. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least \$2,000,000. This coverage shall be provided on a primary basis. Should the Design-Builder not own any automobiles, the automobile and liability requirement shall be construed to allow the Design-Builder to maintain only hired and non-owned liability.

9.2.1.5 Builder's Risk Insurance with Respect to the Work:

The Design-Builder shall maintain comprehensive builder's risk (completed value, but in no event less than the Contract Price) insurance providing coverage for the entire Work at the Project Site, including all fixtures, machinery and equipment, any heating, cooling and electrical systems constituting a permanent part of the building and shall also cover portions of Work located away from the Site but intended for use at the Site and shall also cover portions of Work in transit. Coverage shall be written in a completed value amount not less than the Contract Price on a replacement cost basis without optional deductibles and shall cover compensation for architect's and contractor's services and expenses required as a result of an insured loss and the policy shall state that it is for the benefit of and payable to the State of Connecticut. Such coverage shall insure against any and all casualty or property loss or damage with respect to the Project on an all risk perils basis, including coverage against fire, extended coverage, vandalism, collapse, windstorm, malicious mischief and special extended perils as contained in customary all risk policies, including but not limited to earthquake or flood.

9.2.1.6 Inland Marine/Transit Insurance:

With respect to property with values in excess of \$100,000, which is rigged, hauled, or situated at the site pending installation, the Design-Builder shall maintain Inland Marine/Transit insurance provided the coverage is not afforded by a Builder's Risk policy.

9.2.1.6.1 When required to be maintained, the Builder's Risk and Inland Marine/Transit insurance policy shall endorse the State of Connecticut as a Loss Payee.

9.2.1.7 Professional Services Liability Insurance:

The Design-Builder shall furnish evidence by way of a certificate of insurance that it has obtained a professional services liability insurance policy with policy coverage equal to the greater of;

9.2.1.7.1 \$2,000,000.00 or;

9.2.1.7.2 ten percent (10%) of the Contract Price for negligence and errors and omissions. If any claims are paid against such professional services liability insurance policy, the Design-Builder shall agree to purchase additional insurance in order to maintain the minimum coverage required herein. The insurance shall remain in effect during the entire duration of the Agreement and for eight (8) years after Acceptance of the Project. For policies written on a "Claims Made" basis, the Design-Builder shall maintain a retroactive date prior to or equal to the effective date of the Agreement.

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The Design-Builder shall contractually require its Design Professional to maintain professional liability insurance in the amount of \$2,000,000 minimum coverage for negligence and errors and omissions. If any claims are paid against such professional services liability insurance policy, the Design-Builder shall cause its Design Professional to agree to purchase additional insurance in order to maintain the minimum coverage required herein. The insurance shall remain in effect during the entire duration of the Agreement and for eight (8) years after Acceptance of the Project. For policies written on a "Claims Made" basis, the Design-Builder shall cause its Design Professional to maintain a retroactive date prior to or equal to the effective date of the Agreement.

The Design-Builder shall cause its Design Professional to contractually require any structural engineering firm it hires to maintain professional liability insurance in the amount of \$1,000,000 minimum coverage for negligence and errors and omissions and with the same provisions indicated above.

The Design-Builder and the Design Professional's policies shall provide that it shall provide coverage to indemnify and save harmless the State and its officers, agents and employees from claims, suits, actions, damages and costs of every name and description resulting from negligence and errors and omissions in the work performed by the Design-Builder and the Design Professional under the terms of the Agreement.

9.2.1.8 Contractor's Pollution Liability:

Contractor's Pollution Liability coverage for personal injury, property damage and clean up costs arising from pollution conditions by the operations and activities of the Design-Builder with limits of \$1,000,000.00. Coverage shall be on an occurrence basis. Coverage shall include contractual liability coverage for claims arising out of liability of Contractors and Subcontractors, transporting, loading and unloading, completed operations, and non-owned disposal site coverage.

9.2.1.9 Umbrella Liability Insurance,

Umbrella Liability Insurance, including a drop down provision covering any exhausted underlying aggregate limits, in the amount of \$10,000,000.00 combined single limit each occurrence in excess of the coverages described in 9.2.1.1 Worker Compensation and Employer's Liability, 9.2.1.2 Commercial General Liability, and 9.2.1.4 Automobile Liability above. The State of Connecticut shall be named as an additional insured.

9.2.2 If necessary, the Design-Builder may satisfy the minimum limits required above for Commercial General Liability, Automobile Liability, or employer's liability coverage under an Umbrella or excess liability policy. The underlying limits may be set at the minimum amounts required by the Umbrella liability policy provided the combined limits meet at least the minimum limit for each required policy. The Umbrella Liability Policy shall have an annual aggregate at a limit not less than two (2) times the highest per occurrence minimum limit required above for any of the required coverages. The State of Connecticut shall be specifically endorsed as an additional insured on the umbrella liability policy, unless the Umbrella liability policy provides continuous coverage to the underlying policies on a complete "Follow-Form" basis.

9.2.3 Each insurance policy required to be maintained by the Design-Builder except Workers' Compensation, Employer's Liability, Professional Liability, Owners And Contractors Protective Liability, and Automobile Liability shall endorse the State of Connecticut as an additional insured (loss payee for builder's risk insurance). Additional insured endorsements or loss payee endorsements, as applicable, shall provide coverage on a primary basis.

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- 9.2.4 The Design-Builder shall, at its sole cost and expense, maintain in full force and effect at all times during the term of the Agreement, insurance coverage as described herein. Insurance certificates shall include a minimum thirty (30) day notice requirement to the Owner prior to any cancellation or non-renewal.
- 9.2.5 The Design-Builder shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention, including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.
- 9.2.6 The requirement contained herein as to types and limits of insurance coverage to be maintained by the Design-Builder are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Design-Builder.
- 9.2.7 If any Design-Builder Policy containing the coverage and other terms set forth herein is not available on a reasonable basis, the Design-Builder shall in lieu thereof keep and maintain in full force and effect such policy as is then available on a reasonable basis that most nearly approximates the terms described above. The Design-Builder shall promptly notify the Owner in writing if any of the required insurance is unavailable on a reasonable basis and shall include in such notice the terms and limits of the substitute policies obtained. The Design-Builder shall not obtain or maintain separate insurance coverage specifically related to the Project that is concurrent in form, or contributing in the form of loss, to the coverage required by this Agreement unless the Owner is named in such concurrent or other coverage as an additional insured and loss payee in the same manner as required by this Agreement for the Design-Builder Policy. The Design-Builder agrees that its insurer will not seek contribution from other insurance available to the Owner.
- 9.2.8 Each Design-Builder Policy shall be with companies that are nationally recognized and that have a policyholder's rating of at least A-, VII, as listed at the time of issuance by A. M. Best Insurance Reports, or such other rating as the Design-Builder and the Owner may mutually agree, and are licensed to issue such insurance in Connecticut. Each Design-Builder Policy shall provide that it may not be canceled, terminated, reduced, or materially changed unless at least thirty (30) Calendar Days advance notice thereof has been provided to the Owner, except in the case of cancellation or termination due to a lapse for nonpayment, in which case only ten (10) Calendar Days advance notice shall be required. Each Design-Builder Policy shall include waivers of;
- 9.2.8.1 all rights of subrogation against the Owner and;
- 9.2.8.2 any recourse against any parties other than the Design-Builder for payment of any premiums or assessments under such policy. Each Design-Builder Policy covering third-party liability shall contain a cross-liability endorsement or a severability of interest endorsement providing that coverage, to the maximum amount of the policy, shall be available despite any suit between the insured and any additional insured under such policy. Each Design-Builder Policy shall provide that it may not be invalidated by any act, omission, or negligence of the Owner. The Design-Builder Policies shall not in the aggregate have deductibles or self insured retentions in excess of \$250,000 per occurrence.
- 9.2.9 Each Design-Builder Policy obtained in accordance with 9.2.1.5 Builder's Risk Insurance above shall be on a completed value form including boiler and machinery coverage, with course of construction business interruption insurance in such amount as may be reasonably determined by the Design-Builder, and shall contain an endorsement providing that, in the case of loss, if the Project costs more to restore due to changes in Applicable Laws, then such increased costs shall be insured. This insurance shall include the Owner as loss payee. Design-Builder agrees to reconstruct, at the request of the Owner, any portion of the Project that is damaged or destroyed. Each such Design-Builder Policy maintained shall name the Owner as loss payee. Nothing herein is intended to release the Design-Builder from its liability to the Owner pursuant to this Agreement notwithstanding any such insurance coverage.
- 9.2.10 Commercial General Liability insurance shall include premises-operations (including explosion, collapse and underground subsidence (XCU)), elevators, independent contractors, completed operations and blanket contractual liability on all written contracts.

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Each such Design-Builder Policy maintained in accordance with 9.2.1.6 Inland Marine/Transit Insurance, and 9.2.1.8 Contractor's Pollution Liability Insurance above shall name the Owner as an additional insured, as its interest may appear. Each such policy shall include broad form property damage coverage.

- 9.2.11** The Design-Builder shall deliver, or cause to be delivered, to the Owner certificates of insurance and any other documentation reasonably requested by the Owner evidencing the existence of the Design-Builder Policies, such delivery to be made at least fourteen (14) Calendar Days prior to the Commencement of Work. Within fourteen (14) Calendar Days after the issuance of any additional policies or amendments or supplements to any of the Design-Builder Policies, the Design-Builder shall deliver revised certificates of insurance reflecting any such addition, amendment, or supplement. With respect to any Design-Builder Policy that expires by its terms prior to the date on which Acceptance of the Work occurs, the Design-Builder shall deliver certificates of insurance and any other documentation reasonably requested by the Owner evidencing the existence of a renewal or replacement of any Design-Builder Policy, such delivery to be made at least thirty (30) Calendar Days prior to the expiration of such Design-Builder Policy.
- 9.2.12** If the Owner finds it necessary to access a portion or portions of the Project prior to Substantial Completion for the purpose of installing and testing equipment, the Owner shall give Design-Builder ten (10) Calendar Days notice of when and where such installations and testing are to occur. Design-Builder shall use reasonable efforts to arrange for the insurance company or companies providing the property insurance to consent to such access by endorsement to the policy or policies. No insurance shall be canceled or lapsed on account of the Owner's access to the Project.
- 9.2.13** Except as otherwise expressly provided in this Agreement, all insurance coverage required pursuant to this Article 9, shall be obtained, and maintained by Design-Builder at Design-Builder's sole cost and expense.
- 9.2.14** The Owner does not represent that the insurance coverage specified above, whether in scope of coverage or amounts of coverage, are or will be adequate to protect Design-Builder with respect to the risks it is assuming pursuant to this Agreement, and Design-Builder shall be solely responsible for any deficiencies thereof, such that Design-Builder shall replace all or any part of the Work regardless of any deficiency in coverage.
- 9.2.15** Whenever a surety bond is required in connection with a contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state or a municipality, that is estimated to cost more than five hundred thousand dollars and is paid for, in whole or in part, with state funds, the surety contract between the contractor named as principal in the bond and the surety that issues such bond shall contain the following provision: **"In the event that the surety assumes the contract or obtains a bid or bids for completion of the contract, the surety shall ensure that the contractor chosen to complete the contract is prequalified pursuant to section 4a-100 of the Connecticut General Statutes in the requisite classification and has the aggregate work capacity rating and single project limit necessary to complete the contract"**.

ARTICLE 10 TERMINATION

10.1 Owner's Right to Terminate Agreement

- 10.1.1** Notwithstanding any provision or language in the Agreement, the Owner shall have the sole authority to terminate this Agreement if it finds that such termination is in the best interests of the Owner, or in the interest of public necessity, convenience, or safety as determined by the Owner, in its sole discretion. Any such termination shall be effected by delivery to the Design-Builder of a written Notice of Termination specifying the extent to which performance of Work under this Agreement is terminated, and the date upon which such termination shall be effective. In the event of such termination, the Design-Builder may be entitled to reasonable compensation as determined by the Owner, however, no claim for lost overhead or profit shall be allowed.
- 10.1.2** Without limiting Owner's rights under Section 10.1.1., if Design-Builder fails to observe or

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perform any material agreement or covenant of this Agreement or any other Contract Document, and if such failure continues for more than fifteen (15) Calendar Days after notice of such failure from the Owner, or if any proceeding is instituted against Design-Builder seeking to adjudicate Design-Builder as bankrupt or insolvent, and such proceeding is not dismissed within ninety (90) Calendar Days of such filing, or if Design-Builder declares itself bankrupt or files for bankruptcy protection, or if Design-Builder makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of Design-Builder, or if Design-Builder files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts, or if there is a material adverse change in the financial condition or operations of the business or prospects of Design-Builder that substantially affects Design-Builder's ability to perform the Work in accordance with the Project Schedule, then the Owner may, without prejudice to any other right or remedy the Owner may have, terminate this Agreement. Such termination shall be effective by delivery to the Design-Builder of a written Notice of Termination specifying the extent to which performance of Work under this Agreement is terminated, and the date upon which such termination shall be effective.

- 10.1.3** If the Design-Builder is a sole proprietor and the Design-Builder should die during the term of this Agreement, this Agreement shall be considered terminated. In the event of such termination, the Design-Builder's estate may be entitled to reasonable compensation for any uncompensated Work performed prior to the date of death, and the Owner shall have title to, and shall have the right to immediate use and possession of all finished and unfinished documents prepared under this Agreement. The Owner shall determine the amount of such compensation.
- 10.1.4** Termination of this Agreement shall not relieve the Design-Builder or its surety of their responsibilities for the completed Work, nor shall it relieve the Design-Builder's surety of its obligations to ensure completion of the Work and to pay legitimate claims arising out of the Work.
- 10.1.5** In the event of termination, materials obtained by the Design-Builder for the Work that have been inspected, tested as required, and accepted by the Owner, and that are not incorporated into the Work, may, at the option of the Owner, be purchased from the Design-Builder at actual cost as shown by receipted bills. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the Owner, as shown by actual cost records.
- 10.1.6** In the event of any such termination pursuant to subsection 10.1.1 or 10.1.2:
- 10.1.6.1** Design-Builder upon the effective date of termination, shall:
- .1 immediately discontinue all further Work, or part thereof, as directed by the Owner, on the Project;
 - .2 immediately quit the Project;
 - .3 immediately quit the Site, or such part thereof, as directed by the Owner, leaving all plant, materials, equipment, tools (except personal tools), and supplies to be incorporated in the Work;
 - .4 provide the Owner with a final accounting for the Project as of the date of termination; and
 - .5 provide the Owner the right to inspect and copy all Project records of Design-Builder and the Design Professional;
- 10.1.6.2** The Owner may have the Work completed in accordance with the Contract Documents by such means and in such manner as it may deem to be advisable, utilizing for such purpose, without additional cost to the Owner, such of Design-Builder's plant, materials, equipment, tools (except personal tools), and supplies remaining on the Site or stored off the Site, and also in accordance with Article 10, those Contractors and Subcontractors as it may deem to be advisable;
- 10.1.6.3** Solely for a termination pursuant to Section 10.1.2, Design-Builder shall be liable to the Owner for 100% of the amount thereafter expended by the Owner and reasonably required to complete the Project, to the extent such amount

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exceeds the balance of the Contract Price unpaid as of the date of such termination, and this obligation for payment shall survive the termination of this Agreement. This expense, together with any damages due hereunder for delays caused by Design-Builder, may be set-off and deducted from monies due or to become due to Design-Builder under this Agreement or any part hereof. If such expense is more than the sum of the Contract Price, Design-Builder shall pay the amount of such deficiency to the Owner;

10.1.6.4 NOT USED

10.1.6.5 At the Owner's discretion, Design-Builder shall assign to the Owner and any replacement design builder all subcontracts and purchase orders, deliver to the Owner all Contract Documents and Construction Documents including, but not limited to, plans, Drawings, Specifications, other design information pertaining to the Project, submittals, invoices, and all other documents necessary to complete the Project, and remove from the Site, at Design-Builder's sole cost, all such equipment, waste material, and rubbish as may be requested by the Owner.

10.1.7 Nothing in this Article 10 shall limit the remedies available to the Owner at law, in equity or otherwise if Design-Builder defaults on its obligations under this Agreement or any other Contract Document.

ARTICLE 11 DISPUTES

11.1 Mediation

The Owner and Design-Builder may agree to submit any unresolved claims, controversies, or disputes arising out of or pertaining to this Agreement to a non-binding mediation. The place of mediation shall be Hartford, Connecticut.

11.2 Continued Performance

Unless otherwise agreed to in writing, the Owner and Design-Builder shall continue with performance of their respective duties under the Agreement pending completion of any mediation proceeding or proceeding set forth in Section 11.3.

11.3 Action Against The Owner

Except as otherwise provided in Section 11.1, any claim or dispute under this Agreement or breach thereof shall be settled in accordance with the provisions of Section 4-61, of the Connecticut General Statutes, as revised. Any proceeding pursuant to Section 4-61, of the Connecticut General Statutes, as revised, shall be conducted in Hartford, Connecticut, unless otherwise agreed to by the parties hereto.

ARTICLE 12 ASSIGNMENT AND AMENDMENT

12.1 Assignment

Except as otherwise provided herein, Design-Builder shall not have the right to assign its interest or obligations under this Agreement without the prior written consent of the Owner, which may be withheld in the Owner's sole discretion. The Owner may assign its rights under this Agreement to any other board, agency, or commission of the State of Connecticut.

12.2 Entire Agreement

The Request for Proposals contains additional requirements for the Project, which are incorporated by reference as if fully set forth herein. This Agreement represents the entire Agreement between the Owner and Design-Builder and supersedes all prior negotiations, representations, or agreements between such parties regarding the Project. Except for Clarifications with respect to the Work, this Agreement may be amended only by means of Agreement Amendment signed by both the Owner and the Design-Builder and with the written approval by the State Properties Review Board and the Office of the Attorney General.

12.3 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the successors and assigns (where permitted under this Agreement) of Design-Builder and the Owner.

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ARTICLE 13 MISCELLANEOUS PROVISIONS

- 13.1 Further Assurances.**
Design-Builder and the Owner shall provide such information, execute and deliver such instruments and documents, and take such other actions as may be necessary or reasonably requested by the other party, which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement.
- 13.2 Headings.** The headings set forth in this Agreement are used for organizational purposes only and are not intended to and shall not constitute substantive parts of the Agreement.
- 13.3 All Required Provisions Incorporated**
All provisions required pursuant to this Agreement, including but not limited to the Contract Documents and Applicable Laws, rules and regulations are herein incorporated by reference as if fully set forth herein.
- 13.4 Interpretation of Documents.** The Design-Builder represents that it has fully examined all Contract Documents, including the RFP Documents, and has notified the Owner of any discrepancies or conflicts in the Contract Documents prior to execution of this Agreement. The Design-Builder agrees that any discrepancies or conflicts in the Contract Documents shall not be construed against the Owner nor form the basis of any claim by the Design-Builder against the Owner. If any discrepancy or conflict exists between the Contract Documents, then the Design-Builder shall provide the greater quality or greater quantity of the more stringent requirements, unless the Owner otherwise agrees in writing. Without in any way limiting the foregoing, if any discrepancy or conflict exists among this Agreement, the General Conditions, and/or the General Requirements as set forth in the RFP, then the Design-Builder shall provide the greater detail or more stringent requirements, unless the Owner otherwise agrees in writing.
- 13.5 Counterparts**
This Agreement may be executed in counterparts, each one of which shall be deemed to be an original.
- 13.6 Remedies Cumulative**
The rights and remedies provided herein are cumulative.
- 13.7 Governing Law**
This Agreement shall be governed by the laws of the State of Connecticut without giving effect to its conflicts of law provisions.
- 13.8 Nondiscrimination And Affirmative Action Provisions, Executive Orders, Sexual Harassment Policy, Nondiscrimination Provisions Regarding Sexual Orientation, Summary Of State Ethics Laws, and Large State Government Contracts**
Design-Builder shall be bound by all of the terms and conditions of Appendix G, attached hereto and made a part of this Agreement. For purposes of this Agreement and Appendix G, the word "contractor" as used therein shall be deemed to refer to Design-Builder.
- 13.9 Set-Aside Program**
Design-Builder shall award not less than 25% of the cost of construction to Contractors and Subcontractors who are certified and eligible to participate under the State of Connecticut Set Aside Program for small, minority and women owned business enterprises including 6.25% that must be awarded to certified and eligible minority/women owned enterprises, in accordance with Connecticut General Statutes Section 4a-60g through 4a-60j. This requirement must be met even if Design-Builder is certified and eligible to participate in the Small Business Set-Aside Program. Design-Builder shall draft and submit for approval an affirmative action plan in accordance with the rules and regulations of the Connecticut Human Rights and Opportunities Commission ("CHRO"). The affirmative action plan must be approved by the CHRO as a condition precedent to this Agreement.
- 13.10 Attorneys' Fees**
Unless otherwise expressly set forth in this Agreement, if either party is required to assert a claim under this Agreement against the other party under this Agreement or defend a claim asserted by the other party under this Agreement, each party shall bear its own costs incurred in asserting or defending said action.

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13.11 Connecticut Sales And Use Tax

The Owner has advised the Design-Builder and the Design-Builder hereby so acknowledges, that the purchase of supplies and materials which are to be physically incorporated in and become a permanent part of the Project will not be subject to Connecticut sales and use taxes. Notwithstanding the above, the Design-Builder shall familiarize itself with the current statutes and regulations of the State of Connecticut Department of Revenue Services, including, but not limited to and, if applicable, Section 12-430 (7) Connecticut General Statutes, as revised, entitled "Deposit requirements for persons doing business with non-resident contractors".

13.12 Consent Order

Design-Builder agrees not to enter into any settlement, consent decree, or other agreement, written or oral, between the Design-Builder and the government of the United States, or any department or agency thereof, or any state thereof, which allocates or apportions responsibility or which otherwise affects the liability of or grants immunity to Design-Builder for any noncompliance with any of the Environmental Laws or otherwise relates to any remediation or removal of any environmental condition located at, on, or under the property where the Project is located without the express written consent of the Owner.

13.13 Duty to Cooperate

In the event the Owner is required by any agency of the United States or a State thereof, to investigate or remediate any environmental condition at, on, or under the property where the Project is located, Design-Builder agrees to cooperate with the Owner with respect to such matters as the enforcement agency may request including, but not limited to, production of shipping manifests and related documents, past inventory information, provision of materials related to site history, and internal reports related to the site.

13.13.1 Furthermore, if the Owner makes a claim against any policy of insurance or reinsurance related to the property where the Project is located, or against any third party, or against the Connecticut Underground Storage Tank Fund, or similar fund, Design-Builder agrees to cooperate with the Owner in making such application.

13.13.2 The Design-Builder shall strictly comply with the requirements of all applicable Environmental Laws. Furthermore, the Design-Builder shall not store, generate, or use any Regulated Substances at, on, or under the property in violation of Environmental Laws.

13.13.3 Design-Builder shall limit the use and storage of any Regulated Substances at, on, or under the property to only those quantities required for the execution of the Work. Excess quantities shall be promptly removed from the property upon completion of the operations requiring their use. Under no circumstances shall Regulated Substances be disposed of at, on, or under the property or adjacent property or discharged into any watercourse or sewer. All Regulated Substances shall be shipped off site in accordance with the Environmental Laws and shall list the Design-Builder as the generator of the Regulated Substances on all manifests.

13.14 Environmental Laws Indemnification

13.14.1 Without limiting the terms of Article 9 hereof in any manner, Design-Builder shall jointly and severally protect, indemnify, defend, and hold harmless the Owner and its officers, employees, and agents and their respective heirs, legal representatives, successors, and assigns from and against any and all loss, damage, cost, charge, lien, debt, fine, penalty, injunctive relief claim, demand, expense, suit, order, judgment, adjudication, liability or injury to person, property or natural resources, including attorney's fees and consultant fees arising out of, attributable to, which may accrue out of, or which may result from:

13.14.1.1 a violation of the Environmental Laws in connection with the Project by Design-Builder, any of its Representatives or any person or entity or other source employed or utilized by Design-Builder, or

13.14.1.2 the disposal or alleged disposal of Hazardous Materials (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) by any person or entity or other source, whether related or unrelated to Design-

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Builder, except that these obligations shall not apply in the event of the disposal of Hazardous Materials by the Owner or its Representatives.

13.14.2 All Design-Builder obligations hereunder shall survive this Agreement or any other agreement or action including, without limitation, any consent decree, order, or other agreement between Design-Builder and the government of the United States or any department or agency thereof.

13.15 Access to Records

The Owner reserves the right to access and make copies of the Design-Builder's books and records at any time upon written request from the Commissioner. The Design-Builder shall retain all of its books and records pertaining to the Project, including this Agreement, for a period of seven (7) years from the date of the Certificate of Acceptance. This provision shall survive the termination or expiration of this Agreement.

13.16 Confidentiality of Documents

13.16.1 The Design-Builder agrees on behalf of the Design-Builder and the Design-Builder's principals, employees, agents, heirs, successors and assigns that they shall only utilize drawings, specifications, maps, reports, records, or other documents to the extent necessary for the performance of the Design-Builder's work and duties under this Agreement. This limitation on use applies to those items produced by the Design-Builder, as well as to those items received by the Design-Builder from the Owner or others in connection with the Design-Builder's work and duties under this Agreement.

13.16.2 The Design-Builder further agrees that said drawings, specifications, maps, reports, records, and other documents may not be released to any other entity or person except for the sole purpose of the Work described in this Agreement. No other disclosure shall be permitted without the prior written consent of the Department of Public Works.

13.16.3 The Design-Builder further agrees that the following provision will be included in its contracts with Contractors and Design Professionals and in all Subcontracts:

13.16.3.1 Any and all drawings, specifications, maps, reports, records or other documents associated with the contract Work shall only be utilized to the extent necessary for the performance of the Work and duties under this contract. Said drawings, specifications, maps, reports, records and other documents may not be released to any other entity or person except for the sole purpose of the Work described in this contract. No other disclosure shall be permitted without the prior written consent of the Department of Public Works (Owner). When any such drawings, specifications, maps, reports, records or other documents are no longer needed, they shall be destroyed.

13.17 Annual Certification

If the aggregate value of this Agreement exceeds Fifty Thousand Dollars (\$50,000.00), including all amendments, then the Design-Builder shall annually submit, on or within two (2) weeks of the anniversary date of the execution of this Agreement, a completed annual contract certification to: Room 437, 165 Capitol Avenue, Hartford, CT 06106, to the attention of the Legal Unit Secretary. For the purposes of this section, the execution date of this Agreement shall be the date the Owner signs this Agreement. The accepted and Owner approved form of the annual contract certification can be found on the Owner's Website at www.ct.gov/dpw.

13.18 Ownership of Documents

It is mutually agreed and understood that all finished and unfinished Construction Documents prepared by the Design-Builder and/or the Design Professional pursuant to this Agreement and paid for by the Owner shall immediately become the exclusive property of the Owner, and that the Owner shall have the right to immediate possession and use thereof. The Owner shall have and enjoy all right, title and interest in the Construction Documents, including any rights under copyright laws, whether express or implied. The Owner agrees that all such Construction Documents are not to be altered by others and are to be used only in conjunction with the Project unless written consent is obtained from the Design-Builder. Such consent will not be withheld provided the Owner agrees that upon any alterations of the Construction Documents by others, or upon reuse of the Construction Documents for any other project, the Design-Builder will be relieved by the Owner of any and all

Design-Build Agreement Between the State of Connecticut and Design Builder

responsibility arising out of such alterations or reuse in connection therewith. The Owner shall have all right, title, and interest in the Construction Documents, including any rights under copyright law, whether express or implied. On or before the Substantial Completion Date, the Design-Builder and its Design Professional shall transfer and assign all right, title and interest in the Construction Documents to the Owner by execution and delivery to the Owner of the Assignment of Copyright in the form attached here to as Appendix J. The provisions of this section shall survive the termination of this Agreement and shall thereafter remain in full force and effect.

- 13.19 Promotion**
Unless specifically authorized in writing by the Owner, the Design-Builder shall have no right to use, and shall not use, the name of the State of Connecticut, its officials, agencies or employees or the seal of the State of Connecticut.
- 13.19.1** in any advertising, publicity, promotion;
- 13.19.2** to express or to imply any endorsement of the Design-Builder's products or services; or
- 13.19.3** in any other manner. In no event may the Design-Builder use the State Seal in any way without the express written consent of the Secretary of State of Connecticut
- 13.20 Sovereign Immunity.** Notwithstanding any provisions to the contrary contained in this Agreement, it is agreed and understood that the State of Connecticut shall be not construed to have waived any rights or defenses or sovereign immunity which it may have with respect to all matters arising out of this Agreement except as provided in Sec. 4-61 of the Connecticut General Statutes, as revised or as otherwise provided by law.
- 13.21 Severability.** If any part or parts of this Agreement shall be held to be void or unenforceable, such part or parts shall be treated as severable, leaving valid the remainder of this Agreement notwithstanding the part or parts found to be void or unenforceable.
- 13.22 Police Powers.** Nothing in this Agreement is in derogation of or restricts the exercise of the police powers of the State of Connecticut.
- 13.23 Freedom of Information Act.** The Owner is a "public agency" for purposes of the Connecticut Freedom of Information Act, Sections 1-200 to 1-241 of the General Statutes, as amended (the "FOIA"). Information relating to the Design-Builder, its Contractors and Subcontractors and their affairs received or maintained by the Owner may constitute "public records or files" for purposes of the FOIA subject to public access and disclosure in the manner provided in the FOIA, unless a specific exemption from the public access and disclosure requirements of the FOIA is available in connection with particular records or files. Accordingly, the Owner is relieved from any confidentiality obligations under this Agreement that would be in conflict with its obligations under the FOIA.
- 13.24 No Partnership, Joint Venture or Agency.** Nothing contained herein or done pursuant hereto shall be deemed to create, as between Design-Builder, on the one hand, and the Owner on the other, any partnership, joint venture or agency relationship.
- 13.25 Disclosure of Records.** This Agreement may be subject to the provisions of Section 1-218 of the Connecticut General Statutes, as revised. In accordance with this Section, each contract in excess of Two Million Five Hundred Thousand Dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes, as revised.
- 13.26 Campaign Contribution Restriction Provision.** For all State contracts as defined in Section 1(g)(i)(c) of Public Act 07-1 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice ("Notice") advising state contractors, as defined in Public Act 07-1, of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of such Notice.

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The Notice issued by the State Elections Enforcement Commission, SEEC Form 11, is attached hereto as Appendix I and incorporated herein by reference.

- 13.27 Construction Safety and Health Course.** Pursuant to the requirements of Section 31-53b of the Connecticut General Statutes, as revised, not later than thirty (30) days after the date this Agreement is awarded, the Design-Builder shall furnish proof to the Labor Commissioner that all employees of the Design-Builder and its Contractors or Subcontractors performing manual labor on the Project, pursuant to this Agreement, have completed a course of at least ten (10) hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, in the case of telecommunications employees, have completed at least ten (10) hours of training in accordance with 29 CFR 1910-268.

ARTICLE 14 NOTICES

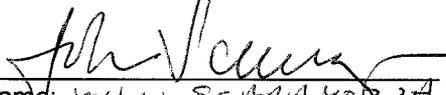
- 14.1** All notices required to be given or delivered under this Agreement shall be in writing and shall be deemed to have been validly given when received by hand-delivery, by a courier or express service guaranteeing overnight delivery, by certified mail or by facsimile transmission telecopy, addressed as provided on Appendix H attached hereto, or to such other address as may be provided by either party hereto to the other in accordance with the terms of this Article.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

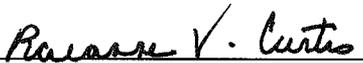
DESIGN-BUILDER:

The Fusco Corporation

By:  4/15/09

Name: JOHN SCARAMOZZA
Its: VICE PRESIDENT, duly authorized

STATE OF CONNECTICUT

By:  4-15-09

Raeanne V. Curtis
Its Commissioner of the Department of Public Works

APPROVED
STATE PROPERTIES REVIEW BOARD

By: 

Edwin S. Greenberg
Its Chairman

Date: 3/26/2009

APPROVED AS TO FORM
ATTORNEY GENERAL

By: 

~~ASSOC. ATTY. GENERAL~~ Attorney General

Date: 4/24/09

Design-Build Agreement Between the State of Connecticut and Design Builder

STATE OF CONNECTICUT)
)
COUNTY OF HARTFORD) ss.: HARTFORD

On this the 15th day of April, 2009, before me, personally appeared John Scaramozza who acknowledged that he/she is the Vice President of The Fusco Corporation, a Connecticut corporation, and that he/she as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as Vice President.

Jinda Lee Huntley

Notary Public
My Commission Expires: **My Commission Exp. Aug. 31, 2011**
~~Commissioner of the Superior Court~~

Design-Build Agreement Between the State of Connecticut and Design Builder

STATE OF CONNECTICUT)
) ss.: Hartford
COUNTY OF HARTFORD)

On this the 15th day of April, 2009, before me, personally appeared Raeanne V. Curtis, Commissioner of the State of Connecticut Department of Public Works, known to me to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

Sinda Lee Huntley
Notary Public
My Commission Expires: My Commission Exp. Aug. 31, 2011
~~Commissioner of the Superior Court~~