

Town of Trumbull
CONNECTICUT
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TOWN HALL
Trumbull

TELEPHONE
(203) 452-5005



AGENDA No. 702

- I CALL TO ORDER
- II MOMENT OF SILENCE
- III PLEDGE OF ALLEGIANCE
- IV ROLL CALL
- V BUSINESS

DATE: December 13, 2012
TIME: 8:30 p.m.
PLACE: Town Hall

NOTICE is hereby given that the Town Council of the Town of Trumbull, Connecticut will hold a special meeting on Thursday, December 13, 2012 at 8:30 p.m. at the Trumbull Town Hall, for the following purpose:

1. TC24-95: To consider and act upon a resolution which would authorize the First Selectman on behalf of the Town of Trumbull to enter into a lease agreement with State of Connecticut Department of Energy and Environmental Protection for property located on Quarry Road.

VI ADJOURNMENT

COPY OF THE RESOLUTION ATTACHED HERETO

Carl A. Massaro, Jr., Town Council Chairman

RESOLUTION

1. TC24-95: BE IT RESOLVED, That the First Selectman on behalf of the Town of Trumbull is hereby authorized to enter into a lease agreement with State of Connecticut Department of Energy and Environmental Protection for property located on Quarry Road.

LEASE

THIS LEASE is made by and between the STATE OF CONNECTICUT, (hereinafter "the State") acting herein by Daniel C. Esty, Commissioner of Energy and Environmental Protection, duly authorized under the provisions of Section 22a-26 of the Connecticut General Statutes with the approval of the Secretary of the Office of Policy and Management, for the consideration of ONE DOLLAR (\$1.00) and the covenants herein reserved and contained, and the TOWN OF TRUMBULL, a municipal corporation, having its territorial limits within the County of Fairfield, and State of Connecticut, acting herein by Timothy M. Herbst, its First Selectman, (herein, the "Lessee");

WITNESSETH:

That the State owns, and the Lessee has requested the State to lease Lessee, certain land for park and related purposes.

NOW THEREFORE:

Subject to, and in consideration of, the stipulations, restrictions and mutual covenants herein contained, the State does hereby lease unto the Lessee, and the Lessee does hereby lease from the State, TO HAVE AND TO HOLD for the term set forth below that certain piece or parcel of land situated in the Town of Trumbull, County of Fairfield and State of Connecticut, being a portion of that property commonly known as "Fairchild Park" as more particularly described in Schedule A attached hereto and made a part hereof as if fully set forth herein (herein, the "Premises"):

The following are the stipulations, conditions and covenants to which the State and the Lessee expressly agree:

1. **Definitions.** Except as specifically provided to the contrary in any Section of this lease, throughout this lease the following capitalized terms have the meaning ascribed thereto in the Sections referenced below:

Word or Phrase	Section
Applicable Laws	9(b)
Approval Date	35
Base Rent	4(b)
Claims	15(a)
Contractors	15(c)
Environmental Conditions	10(f)(i)
Environmental Laws	10(f)(ii)
Existing Environmental Conditions	10(f)(iii)
Imposition(s)	4(c)
Improvements	3(c)
Initial Term	2(a)
Laws	9(b)
Lease End Date	15(t)
Lessee	Preamble
Option(s)	2(b)
Premises	Habendum
Records	7(a)

Regulated Materials	10(f)(iv)
Related and Affiliated Parties	15(b)
Renewal Term	2(b)
Rent	4(a)
State	Preamble
State Indemnified Parties	15(a)
Term	2(c)

2. Term.

- (a) **Initial Term.** The initial term of this Lease (the "Initial Term") shall be for a period of twenty-five (25) years, commencing as of the Approval Date and ending as of 11:59 PM on the twenty-fifth (25th) anniversary of the day immediately preceding the Approval Date, unless sooner terminated as provided herein.
- (b) **Renewal Options.** On and subject to the terms of this Section, the Lessee shall have the option to renew the term of this Lease on the same terms and conditions as set forth in the balance of this Lease for two (2) additional, successive periods of twenty-five (25) years each (each such option being referred to herein as an "Option," and each such period of time to which an Option relates being a "Renewal Term"). In the event the Lessee wishes to exercise any such Option, Lessee must provide the State with written notice to that effect, as provided in Section 34 entitled "Notices" below, no less than one hundred eighty (180), and no more than three hundred sixty (360), days prior to the end of the then current Term of this Lease. Further, any such notice shall be effective if, and only if, the Lessee is not in default of any of its obligations under this Lease (beyond any period provided for notice and an opportunity to cure the same) both at that time it exercises any such Option and upon the expiration the then current Term of this Lease; and providing, second, that, in the case of the second Renewal Period, the Lessee previously has exercised its Option to extend the Term of this Lease for the first Renewal Period.
- (c) As used in this Lease, the "Term" of this Lease at any time shall mean and refer to the Initial Term as the same may have been extended, renewed, supplemented, amended and/or earlier terminated in accordance with the provisions of this Lease.

3. Use.

- (a) In accordance with the original Deed of Gift of the Premises recorded at Volume 27, Page 584 of the land records of the City of Bridgeport, the Premises shall be used for public park and park related purposes only and shall be known and designated as the "Fairchild Memorial Park."
- (b) The Lessee shall not make any Improvements to the Premises without prior written approval of the State, which approval may be withheld in the State's sole and absolute discretion. Further, as per the Deed of Gift, "[n]o building shall be erected on said premises except such buildings as are ordinarily used in parks for public convenience and comfort and such buildings as may be necessary for the care and protection of said park." Title to any and all Improvements (including, but not limited to, equipment) located at or on the Premises at the commencement of

the Term is and shall remain in the name of the State. Likewise, any buildings, structures, equipment and/or other Improvements which are constructed or otherwise installed by the State, Lessee or any other person or entity at, to or on the Premises, during the Term shall immediately be and remain property of the State, unless, in the case of equipment, the State specifically agrees in writing to the contrary. Unless, and then only to the extent, the State otherwise agrees or directs in writing, any Improvements which are or have been erected, installed or otherwise effected by or on behalf of Lessee which are not property of the State at the expiration or earlier termination of this Lease, shall be removed, and the Premises shall then be restored to its prior condition, all at the sole cost and expense of the Lessee. Any Improvements of the Lessee's that are not removed shall be deemed abandoned and shall be and remain the State's property. Nothing herein is intended to, and these provisions therefore shall not be construed to, be in conflict with any similar provisions that may be contained in any Section hereof entitled "Special Flood Hazard Provisions." On the contrary such provisions shall be deemed to be, and thus shall be construed as being, complementary to each other. However, in the event any conflict exists between this section and the section entitled "Special Flood Hazard Provisions," the terms of the latter section shall control.

- (c) For purposes of this Lease, the term "Improvements" means all structures, outdoor lighting, fixtures, and other improvements which currently are located at or on the Premises or hereafter are made or, in either case, are altered at, on, or to the Premises, including, but not limited to:
 - (i) all foundations, footings, buildings, patios, decks;
 - (ii) all "HVAC systems" (herein defined as all boilers, furnaces, air conditioning units, ceiling fans, air handling equipment and any and all associated plumbing, pipes, radiators, ductwork, machinery, equipment and/or other fixtures used (or designed for use) in connection with heating, cooling and/or ventilation of any portion of any structures on the Premises);
 - (iii) all pipes, plumbing, pumps, ducts, conduits, tunnels, sewers, septic systems, wires, circuits, transformers, and any and all other machinery and equipment used (or designed for use) to generate, distribute, recapture, test or monitor any electricity, gas, oil, air, water, telecommunications, and/or other utilities in, to or through the Premises or any structures thereon;
 - (iv) all driveways, roads, sidewalks and footpaths;
 - (v) all man-made or altered berms, excavations, pools, ponds, and watercourses; and
 - (vi) all trees, bushes and other plants.
- (d) Any and all Improvements that are made or otherwise undertaken, and all other work that is performed, at the Premises (herein, sometimes, the "Work") by the Lessee and/or its Contractors shall be done in a workmanlike and timely manner.
- (e) Neither the Lessee nor any of its Contractors shall be entitled to any reimbursement from the State for any such Work; neither will the Lessee

be entitled to any rent credits on account of such Work. On the contrary, any and all such Work shall be performed at the Lessee's sole cost, risk and expense.

- (f) The Lessee agrees that no debris shall be permitted to be disposed of, strewn about or (except as reasonably necessary to hold such material pending its proper and timely collection or disposal) stored on the Premises. The term "debris" includes, but is not limited to: discarded or scrap paper, boxes, barrels, rope, rags, batteries, tires and other trash, waste or debris; junked, dismantled, or wrecked automobiles or parts thereof; any old or scrap copper, iron, steel, brass or other ferrous or non-ferrous materials and any solid waste whatsoever.
- (g) The Lessee shall not permit hazardous or highly inflammable, volatile, or explosive substances to be placed on, under, or over the Premises or permit unreasonably objectionable smoke, fumes, vapors, or odors to arise above the surface of the Premises; providing, however, that nothing in this subparagraph shall preclude any petroleum or other products from being stored in any commercially produced automobiles, tractors or other vehicles which are located on the Premises to the extent such products are held, in each case, in the tanks or other containers installed in such vehicle for such purpose by, or in accordance with specifications promulgated by, such vehicle's original equipment manufacturer and otherwise are in good order and repair.
- (h) The Lessee shall not allow any unregistered or abandoned motor vehicles to remain on the Premises and shall cause the same to be removed. The Lessee shall not allow any boats to be stored on the Premises.

4. **Rent.**

- (a) Rent. During the Term of this Lease, the Lessee shall pay both Base Rent and all Impositions, as provided herein. The term "Rent" includes and refers to all Base Rent, Impositions and any and all other sums which are or become due and owing by Lessee to the State or otherwise under or by reason of this Lease from time to time.
- (b) Base Rent. Base Rent during the Term shall be the sum of One Dollar (\$1.00) for the entire term of the Lease and for the two option renewal terms, if exercised. Lessee has paid the sum of One Dollar (\$1.00) upon its execution hereof, receipt of which is hereby acknowledged by the State, none of which shall be refundable upon the expiration or earlier termination of this Lease.
- (c) Imposition. The Lessee also shall pay or cause to be paid all of the following on or before the due date therefor (collectively referred to as "Impositions" and individually as an "Imposition"), without notice, abatement, deduction or set-off:
 - (i) all taxes, fines and utilities required to be paid by Lessee pursuant to Section 17 below together with any and all other taxes and other governmental charges, levies and assessments (including, but not limited to, real estate taxes, personal property taxes, taxes on rents, leases, occupancy or sales, payments in lieu of taxes, water charges, sewer rents, and all general or special assessments and installments thereof);

- (ii) utility charges (including, but not limited to, all charges for telephone, electricity, gas, water, chilled water, steam, fuel, and refuse removal supplied to and/or consumed at the Premises);
- (iii) excises, insurance premiums, license and permit fees;
- (iv) all claims and other amounts due for labor and material supplied to or for the Premises and/or for rent and other obligations therefor; and
- (v) all other duties, charges, levies, or payments of any kind or nature whatsoever (whether ordinary or extraordinary, foreseen or unforeseen, general or special) as shall, during the Term of this Lease, be charged, imposed, assessed, or levied, or are or become due, for or in connection with the ownership, use and/or occupancy of the Premises, or become a charge or lien upon the Premises, or any part thereof, or any right appurtenant thereto, or the rents, issues and profits arising from or out of the Premises or the ownership, use and/or occupancy thereof.

The Lessee, however, may take the benefit of the provisions of any statute or ordinance permitting any such Imposition to be paid over a period of time, provided such payment over a period of time does not extend beyond the end of the Term of this Lease.

- (d) The Lessee shall pay to the State any Imposition herein reserved that is payable directly to the State as provided in Section 5 below, without notice or demand therefor, on the days and in the manner hereinafter prescribed. Lessee may pay the Imposition by its good checks, subject to collection.

5. **Payments.** The Lessee shall make all payments due to the State by check, made payable to "The Treasurer, State of Connecticut" and addressed to the Office Director, Land Acquisition and Management, Department of Energy and Environmental Protection, 79 Elm Street, Hartford, Connecticut 06106, or such other place or addressee as the State may designate in writing.

6. **Access.** The Premises, except for the existing office and maintenance facility, shall be open to the general public and the Lessee shall not directly or indirectly limit or restrict the use thereof on the basis of residency. All fees and other charges for the use or enjoyment of the Premises shall be approved by the State in writing prior to being placed in effect. Access to the office and maintenance facilities may be restricted.

7. **Audit and Inspection of Plants, Places of Business and Records.**

- (a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective officers, employees and other agents, shall have the right to inspect the Premises and all services and other work performed, and material supplied, at, to or from the Premises, and to repair, maintain, improve or reconstruct any State or federal facility and/or its appurtenances located on, above, below or near the Premises, at any time. If reasonably practicable, the State shall notify the Lessee by letter of its intention, stating the time when any such work is to be performed. However, if an emergency arises, a telephone call from the State shall suffice. The Lessee agrees that, upon being notified by the State, the Lessee shall take steps as necessary to have the Premises closed to all persons and cleared of all vehicles.

- (b) The Lessee shall maintain, and shall require each of its Contractors to maintain, accurate and complete records, books of account and other documents that delineate the nature and extent of the State's, Lessee's, and, in the case of each Contractor, the applicable Contractor's, performance hereunder. The Lessee shall maintain all of its records (whether stored in electronic or other form) that in any way pertain or relate to this Lease and/or the actual or alleged performance and/or lack of performance by any party hereunder (individually and collectively, "Records") at the Lessee's address provided in Section 34 below or such other location as is approved in writing in advance by the State.
- (c) The Lessee agrees to make all of its Records available for inspection and/or examination by the State and its agents during reasonable hours. The State and its agents also shall have the right, at reasonable hours, to inspect and examine all of the part(s) of the Lessee's and its Contractors' plant(s) and/or place(s) of business which, in any way, are related to, or involved in, the performance of this Lease and/or any contract (including, but not limited to, any subcontract hereunder) to ensure compliance with the same. Except in the case of suspected fraud or other abuse or in the event of an emergency, the State will give the Lessee at least twenty-four (24) hours notice of any intended inspections or examinations.
- (d) At the State's request, the Lessee shall provide the State and its agents with hard copies of or electronic media containing any data or information in the possession or control of the Lessee which pertains to the State's business or this Lease, at no cost to the State.
- (e) The Lessee agrees that it will keep and preserve or cause to be kept and preserved all of its Records until three (3) years after the latter of (i) final payment under this Lease, or (ii) the expiration or earlier termination of this Lease, as the same may be amended, supplemented, renewed or extended, and any holdover period.
- (f) The Lessee also agrees that it will require each Contractor to maintain all of its Records until three (3) years after the expiration or earlier termination of its contract or other agreement, as the same may be amended, supplemented, renewed or extended.
- (g) If any litigation, claim or audit is started before the expiration of said three (3) year periods, such records shall be (and shall be required to be) retained until all litigation, claims or audit findings have been resolved.
- (h) The Lessee shall incorporate this Section including this subparagraph (h) verbatim into any contract or other agreement it enters into with any Contractor, except as necessary to reflect the relationship of the parties, providing that all references to the "State" shall remain unchanged.

8. **Maintenance.** The Lessee agrees to maintain the Premises, at its sole cost and expenses, in a clean and safe condition, to the satisfaction of the State, and to arrange for the orderly use of the Premises. In so doing, the Lessee will install and maintain any screening measures deemed necessary by the State to improve the appearance of the Premises and also will keep the Premises clean and free from debris so as to ensure a pleasing appearance; the Lessee

also shall not obstruct or permit the obstruction of any public street or public sidewalk and shall keep any curb cuts and sidewalks on or adjacent to the Premises clean and free of debris, snow and ice (or cause the same to be kept in such condition), all at the Lessee's sole cost and expense. Without limiting the generality of the foregoing, the Lessee also hereby assumes all of the State's legal obligations which the State may have from time to time to keep any curb cuts and sidewalks on or adjacent to the Premises clean and free of debris, snow and ice. The Lessee also shall give the State timely notice of any portions of the said sidewalks in need of any repair or reconstruction and shall take appropriate measures to warn the public of, and to otherwise protect the public from, any dangers presented by any conditions giving rise to the need for any such work.

9. Compliance with Laws.

- (a) The Lessee shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any Applicable Laws, or any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it commercially impracticable to obtain fire or other insurance thereon, or as will cause or be likely to cause structural injury to the Premises or any part thereof, or as will constitute a public or private nuisance. The Lessee further agrees that it will (and will ensure that its Contractors) comply with all Applicable Laws in connection with its and their use of the Premises including, but not limited to, whenever either enters or performs any work or engages in activity on or from the Premises during the Term hereof.
- (b) For purposes of this Lease, the term "Applicable Laws" means and includes all laws, ordinances, rules and regulations, including deed restrictions and charitable trust laws, (herein "Laws") of: (i) all federal, state and local governmental authorities having jurisdiction which pertain to the use or occupancy of any land or buildings or any activity thereon or thereat including, but not limited to, all applicable building, fire, health and safety codes and regulations; (ii) the National Board of Fire Underwriters; (iii) any local Board of Fire Underwriters; (iv) any public utilities and other bodies having similar functions; and (v) any liability, fire, or other insurance companies having policies outstanding with respect to the Premises. Except as, and then only to the extent, otherwise specified by the State in any writing which makes specific reference to this Lease, the term "Applicable Laws" also means and includes all zoning, noise and other local Laws that pertain, or, but for the State's being the owner of record of the Premises, would pertain, to the Premises or any use or occupancy thereof or activity thereon or thereat.
- (c) The Lessee shall comply with all federal, state and municipal laws and regulations including, but not limited to, all environmental, health, police, nuisance, fire, highways, sidewalks and parking areas (including the removal of snow and ice therefrom), public utilities, and other matters, and with the regulations of all persons or corporations supplying gas, electricity or steam on the Premises, and shall indemnify, defend and hold harmless the State against all fines, penalties, expenses, damages and costs for violation thereof any and all Applicable Laws. Nothing herein shall constitute nor be deemed to constitute the issuance of a permit by the State to the Lessee to undertake any regulated activity on the Premises. The provisions of this paragraph shall survive the expiration or earlier termination of this

Lease, as the same may be amended, supplemented, renewed or extended, and any holdover period.

10. **Environmental and other conditions; Prohibitions on use.**

- (a) Lessee acknowledges and agrees that any information which in any manner pertains to the Premises, or any part thereof, and supplied or made available by the State or any of its representatives (herein, individually and collectively, referred to as "Information"), has been (or, in the case of that supplied in the future, will be) furnished to Lessee solely as a courtesy. WITHOUT LIMITING THE GENERALITY OR EFFECT OF THE FOREGOING, LESSEE ACKNOWLEDGES AND AGREES THAT ALL INFORMATION THAT HAS BEEN (OR, IN THE CASE OF INFORMATION THAT IS OR IS TO BE SUPPLIED IN THE FUTURE, WILL BE) PROVIDED, AND THE PREMISES ARE LEASED, ON AN **AS-IS, WHERE-IS BASIS** AND THAT THE STATE HAS NOT MADE, DOES NOT MAKE AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE), INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITIONS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE INFORMATION OR THE PREMISES. Lessee further acknowledges and agrees that no representations, whether written or oral, have been made by the State or any of its representatives regarding any tax consequences or investment potential of leasing the Premises (including, but not limited to, restoring the same) in order to induce Lessee to enter into this Lease or otherwise.
- (b) Lessee acknowledges, represents and warrants that Lessee is familiar with the Premises and has made such independent investigations, as Lessee deems necessary or appropriate concerning the Premises. THE STATE MAKES NO REPRESENTATIONS OR WARRANTIES AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION, WARRANTY, OR GUARANTY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PHYSICAL CONDITIONS OR ANY OTHER ASPECT OF THE PREMISES INCLUDING, BUT NOT LIMITED TO, THE COMPLIANCE OF THE PREMISES WITH ANY APPLICABLE LAWS OR REGULATIONS, THE FINANCIAL EARNING CAPACITY OF THE OPERATION OF THE PREMISES, THE NATURE OR EXTENT OF ANY RIGHT-OF-WAY, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION, OR OTHERWISE, THE EXISTENCE OF SOIL INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, SUSCEPTIBILITY TO LANDSLIDES, SUFFICIENCY OF UNDER-SHORING, SUFFICIENCY OF DRAINAGE, WHETHER THE PREMISES ARE LOCATED WHOLLY OR PARTIALLY IN A FLOOD PLAIN OR A FLOOD HAZARD BOUNDARY OR SIMILAR AREA, THE EXISTENCE OR NON-EXISTENCE OF ANY HAZARDOUS WASTE OR OTHER REGULATED MATERIALS, OR SUBSTANCES, OR OTHER TOXIC MATERIALS OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ASBESTOS OR PETROLEUM PRODUCTS) OR ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE PREMISES.
- (c) Lessee agrees not to use, dispose, store, discharge or generate any asbestos or other Regulated Material at or on the Premises in violation of any Environmental Law or any other applicable law, rule or regulation.
- (d) Lessee shall have no liability for any Existing Environmental Conditions except to the extent that any proposed or actual use or occupancy of all or any portion of the Premises (including, without limitation, any restoration, repair, alteration, movement or improvement of any

buildings and/or physical aspects of the Premises (including, but not limited to, trees and other plants, pools, ponds and watercourses) at or on the same) by Lessee would violate or result in the violation of any Environmental Law, or any such law requires any such condition to be removed, remediated or otherwise remedied or addressed in connection therewith, in which case Lessee agrees to notify the State of such condition, and shall then remove or remedy said condition subject to the State's approval of the means and/or methods to be employed to effect that work, all at Lessee's sole cost and expense.

- (e) Lessee agrees to indemnify, defend and save the State harmless for and against any and all losses, damages, costs, liabilities and claims suffered by State in connection with a breach by Lessee of its representations or obligations set forth in this Section, except for such losses, damages, costs, liabilities and claims caused by State's gross negligence or intentional misconduct. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease, as the same may be amended, supplemented, renewed or extended, and any holdover period.
- (f) For purposes of this Section, the following terms shall have the meanings ascribed thereto below:
 - (i) "Environmental Conditions" means (A) circumstances with respect to soil, surface water, ground water, and/or and similar environmental media at, emanating from or migrating onto the E/R/R District that may require remedial action and/or that may result in claims or demands by, or liabilities to, third parties, including but not limited to any governmental authorities; or (B) any release of any Regulated Materials into the environment; or (C) any noncompliance with any Environmental Laws;
 - (ii) "Environmental Laws" means any and all laws, statutes, ordinances, rules, regulations, orders, or determinations, now or hereafter existing, of any Governmental Authority pertaining to the environment, including without limitation, the federal Water Pollution Control Amendments of 1972 as amended by the Clean Water Act, as amended, 33 U.S.C. §§ 1251 *et seq.*, the federal Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.*, the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 *et seq.*, the federal Hazardous Materials Transportation Act of 1975, as amended, 49 U.S.C. §§ 5101 *et seq.*, the federal Safe Drinking Water Act, as amended, 42 U.S.C. §§ 300f *et seq.*, the federal Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601 *et seq.* and any and all comparable or similar environmental laws, statutes, ordinances, rules or regulations of the United States and/or the state of Connecticut applicable to the regulation or control of any Regulated Materials or to the design, development, purchase, acquisition, disposition, equipping, construction, financing, leasing, maintenance, ownership, occupancy, possession, control, management, use or non-use or operation of any property, facility, structure or Improvement forming part of the Premises;

- (iii) "Existing Environmental Conditions" means any Environmental Conditions at, on or under the Premises (including Regulated Materials) existing on or before the Commencement Date of this Lease; and
 - (iv) "Regulated Materials" means (A) any chemical, compound, material, mixture or substance that is now or hereafter defined, determined, listed, classified, identified, regulated as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous wastes," "pollutants," "contaminants," "toxic wastes," "toxic materials," or "toxic substances" or terms of similar meaning under any applicable law, or under any rules or regulations adopted or promulgated pursuant thereto, including any Environmental Laws; and (B) any oil, petroleum or petroleum derived substance, any flammable substances or explosives, any radioactive substances or radioactive materials, any hazardous wastes or substances, any toxic wastes or substances, or any other materials or pollutants which cause any part of any facility, structure or improvement to be in violation of any Environmental Law; and (C) asbestos in any form, urea formaldehyde foam insulation, or electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of applicable legal or regulatory limits.
- (g) Lessee covenants and agrees that it will not knowingly use or occupy, nor permit the Premises to be used or occupied, for any purpose (i) other than as provided for herein; (ii) which shall violate any certificate of occupancy or any zoning, land use, or building restriction then in force relating to the Premises; (iii) which would cause or result in the breach of any covenant, restriction, license, condition, easement or agreement covering or affecting the use of the Premises; or (iv) which would cause or result in any violation of any applicable law, rule or regulation. Without limiting the foregoing, Lessee shall not use or occupy any portion of the Premises, nor permit any portion to be used or occupied, for (A) a facility that sells or displays any material that is obscene, pornographic or similarly sexually explicit, (B) any off-track betting, casino or other type of gambling operation or sports facility in which gambling is allowed, (C) any pawn shop, (D) any facility a primary purpose of which is the fueling, service or repair of automobiles or other machinery or equipment, and (E) any facility which sells or distributes firearms or explosive devices.
- (h) Lessee further covenants and agrees that it will not knowingly suffer any act to be done or any condition to exist on the Premises, or any article to be brought thereon, which may be unreasonably dangerous or noxious or which constitutes a nuisance, public or private, or which may make void or render voidable any insurance contract then in force with respect to the Premises or any adjacent property, or make it impracticable to obtain or maintain any insurance required to be maintained by Lessee under this Lease, or which causes obnoxious odors to emanate or to be dispelled from the Premises.
- (i) Lessee shall ensure that the provisions of paragraphs (c) through (h), and this paragraph (i), of this Section are incorporated verbatim in all subleases and other agreements under or by which any person or entity may be permitted or allowed to use or occupy all or any portion of the

Premises, except as necessary to reflect the relationship of the parties, providing that all references to the "State" shall remain unchanged.

(j) For purposes of this subparagraph, the term "State" includes the agency through which this Lease was entered into on behalf of the State. The Lessee, for a period of ten years following the date of termination of this Lease, shall maintain copies of all records required by law to be generated by it with respect to environmental conditions on the Premises which are the subject of this Lease, and of all incidents which impact (or threaten to impact) the same (each such incident being an "Event"). For purposes of this Lease, an Event shall include, but not be limited to, the discharge, spillage, uncontrolled loss, seepage, or infiltration, of oil, or petroleum, or chemical liquids or solid, gaseous products, or hazardous waste, or waste regulated under state or federal law. Within Twenty-four (24) hours following the occurrence of any Event, the Lessee shall notify the State of the same in writing as provided in Section 34 below entitled "Notices." Said notification to the State shall be in addition to, and not in lieu of, any and all other record keeping and reporting requirements imposed upon the Lessee by law. Upon written request by the State, the Lessee shall permit the State to inspect the premises any and all records required to be maintained hereunder, and promptly shall provide the State with such copies of same as the State may request in writing, at no cost to the State. The Lessee hereby waives any claim of privilege that may attach to said records.

11. **Pest Management.** The Premises must be managed in accordance with organic care practices and maintained in an environmentally responsible manner by implementing integrated pest management practices for both the playing surface and adjacent Premises. Information regarding these subjects is available from DEEP at the following website:

<http://www.ct.gov/dep/cwp/view.asp?a=2708&q=379676&depNav%20GID=1763>

12. **No Assignment or Subletting.** The Lessee shall not sublet, assign, pledge, mortgage, hypothecate or otherwise transfer or convey all or any part of the Premises, this Lease, or any interest therein or herein or any estate created hereby (herein, a "Transfer") without receipt of prior written approval of the State, which approval may be withheld in its sole and absolute discretion. Any Transfer effected or attempted to be effected in contravention of this Section shall be null and void, *ab initio*

13. **Special Flood Hazard Provisions.** In the event any portion of the Premises are located within a 100 year flood plain, no National Flood Insurance Program insurable structures shall be placed on the Premises and no obstructions shall be placed on the Premises that would increase flood hazards or act as an impediment to stream flow or raise flood water heights without the explicit written consent of the State as stipulated below. The Lessee must obtain the State's prior written consent in order to undertake any such site improvements or construction activities and before placing any structures on the Premises, which consent may be withheld in the State's sole and absolute discretion. Improvements and construction activities subject to this provision include, but are not limited to, any permanent or temporary structures, fencing, roadways, walkways, site grading, drainage, landscaping, excavation and/or removal or addition of sand, gravel, or fill from the Premises. Such written consent must be obtained from the Director of the Inland Water Resources Division of the Department of Energy and Environmental Protection, Bureau of Water Protection and Land Reuse or successor. Notice of such written consent shall

also be provided to the Director of Land Acquisition and as hereinafter provided for in this Lease. Any failure by the Lessee to obtain the aforementioned consents will be considered cause for termination of the Lease by the State.

14. **Insurance.**

- (a) Basic Coverages. Subject to the provisions of subparagraph (b) below, the Lessee agrees that, throughout the Term of this Lease, including any supplements hereto and renewals hereof, it will procure and maintain, and will require its Contractors (as defined in Section 15 below entitled "Indemnification") to maintain, the following types and amounts of insurance on the terms specified in this Section, all at no cost to the State:
- (i) Commercial General Liability insurance (including Contractual Liability, Independent Contractors, Premises and Operations, Products and Completed Operations and Broad Form Property Damage coverages) with a total limit of liability of not less than One Million Dollars (\$1,000,000) for all damages for, or arising out of, bodily injuries to or death of all persons in any one accident or occurrence, and, subject to that limit per accident, and the provisions of subparagraph (b)(ii) below, a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000), for all damages for, or arising out of, bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period;
 - (ii) Comprehensive Automobile Liability Insurance which covers all motor vehicles, including those owned, hired or non-owned, which are used in connection with this Lease with a total limit of liability of One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period;
 - (iii) Worker's Compensation & Employer's Liability Insurance and, as applicable, insurance required in accordance with the U. S. Longshore and Harbor Workers' Compensation Act, all in accordance with the requirements of the laws of the state of Connecticut, and of the laws of the United States, respectively, which covers all of the Lessee's employees at or working from the Premises, which coverage shall include Employer's Liability coverage with minimum limits of \$500,000 for each accident, \$500,000 for disease, and \$500,000 for each employee, per policy period not to exceed one year in duration; and
 - (iv) Liquor Law Liability insurance, but only to the extent alcoholic beverages are sold or dispensed at or from the Premises, covering the State and the Lessee with respect to any liability imposed by Connecticut General Statutes Section 30-102 et seq. and otherwise with respect to any and all claims for injuries (including death) to third parties and damage to property caused by an intoxicated patron of the Premises and arising from the sale or dispensing of alcoholic beverages to such patron of the Premises, which insurance shall have a combined single limit of Two Million Dollars

(\$2,000,000.00) for each occurrence with a deductible not exceeding Ten Thousand Dollars (\$10,000.00).

- (b) Additional Basic Coverage Provisions. Notwithstanding any other provision of subparagraph (a) above to the contrary:
- (i) Any party required to maintain insurance hereunder (herein, individually, an "Insuring Party" and, collectively, the "Insuring Parties") shall be deemed to be in compliance with subparagraph (a) above even if such party's insurance policy(ies) are not written for amounts specified in subparagraphs (a)(i), (ii) and/or (iv) above, providing said party carries Umbrella Liability insurance for any differences in the amounts specified therefor and the policy(ies) for such Umbrella Liability insurance follow(s) the form of said party's primary coverages;
 - (ii) Unless any commercial general liability insurance maintained pursuant to subparagraph a(i) above is written solely for this project, the general aggregate limit shall be twice the occurrence limit; and
 - (iii) All products and completed operations coverage required to be maintained by the Lessee and its contractors and subcontractors shall continue to be maintained for at least three (3) years following final acceptance of their work. The provisions of this subparagraph (b)(iii) shall survive the expiration or earlier termination of the Term of this Lease as the same may be amended, supplemented, renewed or extended and any holdover period.
- (c) State as Additional Insured. The State of Connecticut and its officials, agents and employees shall be named as additional insureds under any and all coverages (other than workers' compensation insurance) maintained pursuant to subparagraphs (a)(i),(ii),(iii) and (iv) and subparagraph (b) above.
- (d) Errors and Omissions Coverage. In the event the Lessee or any of its Contractors provide any architecture, engineering, design, accounting, legal or other professional services under or in connection with this Lease and/or at or with regard to the Premises, each person and entity providing such services shall be duly licensed and maintain Errors and Omissions coverage, at such party's sole cost and expense, in an amount not less than \$2,000,000 per occurrence. In the case of any engineer, architect or other design professional, each such policy must be kept in effect for a period of seven (7) years after substantial completion of the project on or for which any such services are rendered; otherwise the professional involved shall maintain such coverage for a period for at least three (3) years following completion of its work hereunder.
- (e) Builder's Risk Coverage. During the period of any construction or reconstruction of any improvements on the Premises, either the Lessee or its Contractor(s), at its/their sole cost and expense, shall provide Builder's Risk coverage to cover the subject property for all risks on a Completed Value form. Coverage provided under all Builders' Risk policies shall extend to off-site storage and Boiler and Machinery risk if part of the project. The State of Connecticut shall be named as a Loss Payee under each Builder's Risk policy.
- (f) Fire, Casualty and Related Coverages. The Lessee shall procure and maintain, at its sole cost and expense, a policy or policies of Standard

Fire and Casualty Insurance, Special Form Coverage, which insures all buildings and other improvements constituting a part of the Premises (including, but not limited to, all heating and cooling systems, elevators, mechanical systems, and generators) against all risks of damage thereto which, as of the date of this Lease, are covered under Insurance Service Office (ISO) Form CP 10 30 or its equivalent, together with endorsements insuring against damage and other loss, costs and expenses due to earthquake, demolition, removal of debris, preservation of property, fire department service charges, pollutant clean-up and removal, and increased cost of construction and contingent liability associated with building laws and regulations, and, if any portion(s) of any of the buildings constituting a part of the Premises are located within a 100 year flood zone, also flood. The State shall be named as a loss payee under all such policies of insurance. The coverage limits for such insurance shall be not less than the full replacement cost of the completed buildings and other improvements constituting a part of the Premises and shall be sufficient to prevent the Lessee from being deemed a co-insurer of any loss, risk or damage covered thereby. The Lessee shall use the proceeds from any such insurance to repair or rebuild any building or other improvements constituting a part of the Premises that may be damaged or destroyed by any casualty.

- (g) Insurance Certificates; Deductibles; Self-Insured Retentions. Upon execution of this Lease and on or before the tenth (10th) business day preceding every subsequent anniversary date of the execution of the Lease during the term of this Lease, the Lessee agrees to furnish to the State, only on the form or forms supplied by the State, a certificate of insurance fully executed by an insurance company or companies satisfactory to the State, for the insurance policy or policies required hereinabove, which policy or policies shall be in accordance with the terms of said certificate of insurance. Each certificate of insurance shall specify amounts of deductibles, if any, for each type of coverage in the policy or policies. Deductibles shall not exceed amounts approved by the State in writing. If at any time during the term of this Lease, the Lessee shall fail to provide any such insurance documentation within ten (10) business days after written notice from the State, or duly maintain (or ensure that its Contractors maintain) all required insurance coverage in full force and effect, then the State, in addition to any other remedies it may have, all of which are preserved for the State, may either immediately terminate this Lease or procure or provide alternate insurance coverage and charge the Lessee the cost thereof, which amounts shall then be promptly paid by the Lessee to the State as Imposition hereunder. Copies of all required insurance policies shall be retained by the Lessee until three (3) years after the expiration or earlier termination of the term of this Lease.
- (h) No Limit on Liability. The amount of casualty insurance maintained by the Lessee shall in no way limit any obligations the Lessee otherwise may have under this Lease to repair or reconstruct any improvements constituting a part of the Premises or any portion thereof following a casualty.
- (i) Types of Insurance and Insurers. All of the Insuring Parties' insurers shall be licensed by the State of Connecticut and be rated A-(VIII) or better by the latest edition of A. M. Best's Rating Guide or, if such guide is no longer available, any generally recognized replacement therefor. All insurance required hereunder shall be written on an "occurrence" (as opposed to "claims made") basis, except for professional liability insurance, which

may be maintained on a "claims made" basis; providing, however, that the named insured also shall be obligated to procure an extended reporting period thereto or a subsequent "claims made" policy with the same retroactive date as the prior "claims made" policy, as necessary to protect the named insured from any claims, actions or causes of action which first accrue during the initial policy period, which shall be retroactive to the date prior to that when the named insured commenced performing any work for or with respect to the Premises.

- (j) Lessee's and its Insurers' Obligations. Each Insuring Party shall be fully and solely responsible for and thus shall pay any and all costs and expenses as a result of any and all coverage deductibles and/or self-insured retentions under any policy(ies) of insurance maintained by it. None of the Insuring Parties' insurers shall have any right of subrogation or recovery against the State or any of the State's officials, agents or employees, all of which rights are hereby waived. All insurance maintained by each Insuring Party shall be primary and noncontributory and shall not be in excess of any other insurance.
- (k) Additional Insurance; State's and its Insurers' Rights. Nothing herein shall preclude any Insuring Party from procuring and maintaining, at such party's sole cost and expense, such additional insurance coverage as such party deems desirable or appropriate, providing, however, that (i) all liability insurance maintained by any Insuring Party covering the Premises or any activities at the same shall name the State and the State's officials, agents and employees as additional insureds, and (ii) all casualty insurance maintained by the Lessee with respect to the Premises shall name the State as a loss payee. Any insurance maintained by the State shall be in excess of any and all insurance maintained by each Insuring Party, and shall not contribute with it.
- (l) Limitations on Cancellation. The insurance policy(ies) required under this Article shall not be subject to cancellation unless notice is given to the State, in the manner set forth in this Lease for providing "Notices" at least thirty (30) days prior to the date of cancellation.
- (m) Types of Policies. Except as otherwise provided to the contrary in this Section, any insurance required by this Lease may be obtained by means of any combination of primary and umbrella coverages and by endorsement and/or rider to a separate or blanket policy and/or under a blanket policy in lieu of a separate policy or policies, provided that the Lessee-Insuring Party shall deliver a certificate of insurance of any said separate or blanket policies and/or endorsements and/or riders evidencing to the State that the same complies in all respects with the provisions of this Lease, and that the coverages thereunder and the protection afforded the State thereunder are at least equal to the coverages and protection which would be provided under a separate policy or policies procured solely for the Premises.
- (n) Additional Lessee Responsibilities. The Lessee shall neither do, nor allow its Contractors to do, anything (or fail to do anything) whereby any of the insurance required by the provisions of this Section shall or may be invalidated in whole or in part. In the event that any of the Lessee's Contractors so acts (or fails to act), then the Lessee shall promptly use commercially reasonable efforts to eliminate that condition.
- (o) State's Rights to Adjust Insurance Requirements. The State shall have the right to review and revise the insurance requirements applicable to the

Lessee and its Contractors during the term of this Lease and to make reasonable adjustments to the types and amounts of, and terms pertaining to, insurance coverage required hereunder, as the State reasonably deems to be prudent in the circumstances, based upon increased costs of construction, inflation, statutory law, court decisions, claims history, and other relevant factors. Notwithstanding the provisions of this subparagraph (o), at the commencement of each Renewal Term, the Lessee agrees to adjust the required insurance coverage amounts in subparagraphs (a)(i), (ii), (iii) and (iv) of this Section to the amounts required in similar leases entered into by the State at such time of renewal.

- (p) No Waiver. The failure of the State, at any time or from time to time, to enforce the provisions of this Section concerning insurance coverage shall not constitute a waiver of such provisions; neither shall the Lessee's or its Contractors' obligation to maintain insurance, nor any failure by the State to enforce such obligations, in any respect reduce the obligation of the Lessee or its Contractors to indemnify, defend and hold and/or save harmless the State Indemnified Parties as provided elsewhere in this Lease.
- (q) Copies of Policies. Each Insuring Party shall produce, within five (5) business days, a copy or copies of all applicable insurance policies requested by the State. The State is hereby authorized to contact the insurance provider(s) of the insurance policies required under this Lease and obtain such policy(ies) directly.
- (r) Sovereign Immunity; Other Provisions. Unless requested otherwise by the State of Connecticut, each Insuring Party and its insurers shall waive sovereign immunity as a defense and shall not use the defense of sovereign immunity in the adjustment of claims or in the defense of any suit brought against it or the State. Each Insuring Party shall assume and pay all costs and billings for premiums and audit charges earned and payable under the required insurance. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless.
- (s) Flow-down Requirements. The provisions of this Lease by which the Lessee has agreed to indemnify the State and this Section (including this subparagraph (s)) shall be incorporated and made a part of each contract or other agreement which the Lessee enters into with any Contractor appropriately modified to reflect the relationship of the parties; providing, however, that all references to, and all rights and protections afforded to, the State, as provided in said provisions, remain unchanged – it being understood and agreed, however, that the provisions of subparagraphs (e) and (f) of this Section only shall be incorporated in agreements with the Lessee's subtenants, if any; and provided, further, that the requirement to maintain Liquor Law Liability Insurance pursuant to subparagraph (a)(iv) above only shall apply to those subtenants and concessionaires who sell or serve alcoholic beverages at or from the Premises.
- (t) Survival of Provisions. The provisions of this Section shall survive the expiration or earlier termination of this Lease, as the same may be amended, supplemented, renewed or extended, (the "Lease End Date"), and any holdover period, to the extent they require the Lessee and/or any Contractor to maintain insurance coverage for a specific period of time that has not as yet expired as of the Lease End Date (or

the end of any holdover period) or relate to or specify any rights, remedies and/or terms that apply to any insurance coverage which applies to any claims that arise or are made in connection with the Premises whether before or after the Lease End Date (or the end of any holdover period).

15. Indemnification.

- (a) The Lessee shall indemnify the State and its officers, agents, and employees and their respective heirs, legal representatives, successors and assigns (the "State Indemnified Parties") for, and also shall protect, defend, and hold harmless, and hereby releases, the State Indemnified Parties from and against, any and all claims, demands, suits, actions, causes of action, losses, liabilities, damages, judgments, orders, decrees, injunctive relief, fines, liens, debts, charges, executions, penalties, interest and expense whatsoever, including, but not limited to, all reasonable attorney's fees, court costs, expert fees and other costs of investigation and defense thereof, (hereinafter, individually and collectively, "Claims") for, or which arise or are incurred (or are alleged to have arisen) from, in connection with, or as a result of, (i) the Lessee's possession, use or occupancy of the Premises, (ii) any default in the observation or performance of any condition or other obligation on the part of the Lessee and/or its Contractors to be kept, fulfilled, observed or performed under or as set forth in this Agreement, and/or (iii) any bodily injury (including death) and/or property damage that occurs on or about the Premises or results from the acts or omissions of the Lessee and/or any of the Lessee's Contractors and/or Related and Affiliated Parties under or in connection with this Agreement and/or the possession, use or occupancy of the Premises, regardless of where the injury, death, or damage may occur, unless, but then only to the extent, any such injury, death or damage is caused by the gross negligence or willful misconduct of any State Indemnified Party(ies). The State shall give to the Lessee reasonable notice of any such Claims or actions. The Lessee shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section.
- (b) The Lessee's obligations under this Section to indemnify, defend and hold harmless the State Indemnified Parties against Claims includes Claims concerning confidentiality of any part of or all of the Lessee's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or un-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used hereunder or otherwise in connection with the Premises.
- (c) For purposes of this Agreement, the term "Contractors" means and includes all of the Lessee's contractors, subcontractors, consultants (including, but not limited to, any design or other professionals), subtenants, licensees, and concessionaires that are engaged, or are allowed, to perform or conduct any work, business or advice, or supply any materials, under or in connection with this Lease and/or on, at, to or from the Premises, and/or to otherwise use or occupy any portion of the Premises, during the term hereof; and a person or entity's "Related and Affiliated Parties" means and includes such person's or entity's owners, members, directors, officers, shareholders, partners, representatives, agents, servants, consultants, Contractors and employees as well as any other person or entity with whom such person or entity is in privity of oral or written contract.

- (d) The Lessee shall reimburse the State for any and all damages to the real or personal property of the State caused by the acts or omissions of (including, but not limited to, a breach of this Lease by) the Lessee and/or any of Lessee's Contractors and/or Related and Affiliated Parties. The State shall give the Lessee reasonable notice of any such Claims.
 - (e) The Lessee's duties under this Section shall remain fully in effect and binding in accordance with the terms and conditions of the Lease, without being lessened or compromised in any way, even where the Lessee is alleged or is found to have merely contributed in part to the acts or omissions giving rise to any Claims and/or where the State is alleged or is found to have contributed to the acts or omissions giving rise to any Claims.
 - (f) Without in any way limiting the provisions of Section 14 above entitled "Insurance" or the other paragraphs of this Section, the Lessee shall carry and maintain at all times during the term of the Lease, and during the time that any provisions survive the term of the Lease, sufficient general liability insurance to satisfy its obligations under this Lease. The Lessee shall name the State as an additional insured on all such the policies and shall provide a copy of the policies to the State prior to the effective date of the Lease. The Lessee shall not begin Performance until the delivery of the policies to the State. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency is contributorily negligent.
 - (g) The provisions of this Section shall survive the expiration or earlier termination of this Lease, as the same may be amended, supplemented, renewed or extended, and any holdover period, and shall not be limited by reason of any insurance coverage.
16. **Hold Harmless.** The Lessee will at no time hold the State responsible for damage, theft or acts of vandalism occurring to equipment or property owned or Leased by it or in its possession and located on the Premises or any other damage of any nature that may be sustained by such equipment or property while located on the Premises, except as such damage is caused by the negligence of the State's agents, employees and representatives acting within the apparent scope of their authority. The provisions of this Section shall survive the expiration or earlier termination of this Lease, as the same may be amended, supplemented, renewed or extended, and any holdover period, and shall not be limited by reason of any insurance coverage.
17. **Taxes, Fines and Utilities.**
- (a) The Lessee shall be responsible for securing, and paying for, any and all water, gas, oil, electricity, sewage and other private and/or public utilities that are delivered to, and/or consumed or otherwise used at, the Premises during the Term of this Lease, unless otherwise specifically provided to the contrary in this Lease. As and to the extent requested by the State, the Lessee shall abandon and make safe all utility connections required for the Premises at the end of this Lease, all at the Lessee's sole cost and expense.
 - (b) The Lessee also hereby assumes and shall pay all taxes, if any, levied on or against the Premises for all tax periods which occur during the Term of this Lease. All grants-in-lieu of taxes (under Section 12-19a of the General

Statutes of Connecticut as the same may be amended) also shall be assumed and paid by the Lessee for all tax periods which occur during the Term of this Lease, if such a grant-in-lieu of taxes concerning the Premises is required of the State. Any taxes or grants-in-lieu of taxes paid or payable with respect to any portion of any tax period which occurs prior to the commencement of, or subsequent to the expiration or earlier termination of, this Lease shall be prorated by dividing the amount otherwise payable during said tax period by the number of days encompassed within said period and multiplying the resulting quotient by the number of days this Lease was effect during such tax period. For purposes of this Lease a "tax period" means that period of time for or with respect to which any taxes or grants-in-lieu of taxes are or have been levied, due and/or paid or payable to any taxing authority within whose jurisdiction the Premises are located.

(c) The Lessee will be responsible for and pay all fees, fines and/or penalties assessed for violation of, or which are required to be paid in order to comply, for compliance with all State and municipal health and building codes and regulations.

(d) The provisions of this Section shall survive the expiration or earlier termination of this Lease, as the same may be amended, supplemented, renewed or extended, and any holdover period.

18. **No Waste.** The Lessee shall not mutilate, damage, misuse, or commit or suffer waste on the Premises, but shall keep the same and upon the termination hereof deliver them up, in as good condition as they may be put in by the Lessee or the State, ordinary wear and tear, fire without fault or malfeasance of any occupant of the Premises, and damages by the elements without concurring fault on the part of the Lessee, excepted.

19. **State's Termination Rights.** In case the Lessee shall fail to perform any stipulation or condition herein, shall violate any provision of this Lease, or shall be declared bankrupt or insolvent according to law, or shall make an assignment for the benefit of creditors, then and in any of said cases this Lease shall, at the option of the State, terminate, provided, that the State shall give written notice to the Lessee of termination hereof at its principal place of business, and provided, that, except in the case of a termination effected pursuant to Section 14(g) above by virtue of the Lessee's failure to maintain any insurance coverage required by this Lease, the Lessee shall have the right to void such termination by notifying the State of its intent so to do within ten (10) days of its receipt of the State's notice of termination hereunder and, within sixty (60) days after receipt of the State's termination notice, either cures the matter for which the State has notified the Lessee of its having elected to terminate the Lease, or, if the matter cannot be cured by the payment of money, the Lessee within said sixty (60) day period commences to cure and thereafter diligently proceeds to cure the matter giving rise to the State's termination. In addition, upon compliance by the State with the above notice provisions, this Lease may be terminated at any time for the convenience of the State.

20. **Lessee's Right to Terminate.** If during the term of this Lease, the Lessee determines that it no longer is able to (or has no desire to) continue to lease the Premises, it shall so notify the State of such fact in writing, whereupon this Lease shall terminate on the earlier of (i) the ninetieth (90th) day following the date the State receives such notice, or (ii) such earlier date as is then specified by the State in writing.

21. **Duties at End of Lease.**

- (a) At the expiration or earlier termination of this Lease, the Lessee will quit and surrender the Premises hereby leased and, in so doing, remove all of its personal property from the Premises at its own sole cost and expense, leaving the Premises in as good or better condition as when it took occupancy, reasonable wear and tear excepted. In the event the Lessee fails to vacate the Premises at the expiration or earlier termination of this Lease, the Lessee shall become a tenant at sufferance until the Lessee vacates the Premises on the same terms and conditions specified herein as if the Term hereof had not ended; providing, however, that (i) the Term of this Lease shall not be, nor deemed to be, renewed or otherwise extended, (ii) the Lessee shall not have any possessory or other rights in or to the Premises, all of which are hereby disclaimed by the Lessee, (iii) the Lessee shall pay the State a "use and occupancy fee" on the first day of each month or part thereof that the Lessee has not vacated the Premises equal to the greater of (1) \$10,000 per month, or (2) double the fair market rental value of the Premises at the time of said termination, and (iv) in addition to any and all other rights that State has or may have against the Lessee, all of which are hereby reserved to the State, the Lessee shall reimburse the State for any and all costs and expenses which are incurred by the State (including, but not limited to, reasonable attorney's fees and costs) in connection with any effort that that may be undertaken by the State to have or to seek to have the Lessee and/or any other person(s) removed from the Premises and/or to collect any sums due to the State under this Lease. Without limiting the generality of the foregoing, the Lessee agrees that, for and so long as the Lessee shall continue to occupy the Premises, the Lessee will continue to be bound by and will comply with any and all of the Lessee's obligations that it has agreed to perform during the Term of this Lease, notwithstanding that the Term of this Lease shall not be extended thereby.
- (b) Except as otherwise provided in Section 3(b) or directed by the State, at the expiration or earlier termination of this Lease, the Lessee shall remove all Improvements (including, but not limited to, signs, lighting, fences, paved areas and sidewalks) that have been made by or on behalf of the Lessee and restore the Premises to the same physical condition in which it existed immediately before the execution of this Lease, all at no expense to the State. In the event the Lessee shall not fulfill this obligation within a reasonable time when requested by the State, the State shall at its option arrange to have such work done and shall bill the Lessee for all expenses incurred in connection with the same. The Lessee shall promptly pay all such amounts when billed, without recourse.
- (c) Upon the expiration or earlier termination of this Lease, the proceeds of all insurance policies payable on account of any casualty or like occurrence which occurs on or about or otherwise affects the Premises shall be paid to the State to the extent any of such proceeds have not been used to pay any costs or expenses associated with repairing or restoring any damage caused thereby.
- (d) The provisions of this Section shall survive the expiration or earlier termination of this Lease, as the same may be amended, supplemented, renewed or extended, and any holdover period.

22. **State's Rights of Re-entry.** In the event of termination of this Lease under any Section of this Lease, it shall be lawful for the State to re-enter and resume

possession of the Premises, and the same to have again, repossess and enjoy, or to dispossess and remove all persons and their goods and chattels therefrom without liability in law or equity for any damage caused by such removal. The Lessee expressly covenants and agrees to pay the costs and expenses including attorney's fees of the State in collecting the same and in re-entering said Premises.

23. **Americans with Disabilities Act (ADA).** The Lessee represents that it is familiar with the terms of the Americans with Disabilities Act of 1990 (the "Act"), Public Law 101-336, and that the Lessee and its Contractors are and will remain in compliance with the Act in performance of this Lease throughout the Term hereof. Without limiting the foregoing, the Lessee agrees that, in performance of this Lease, neither it nor its Contractors: (a) shall discriminate against a qualified individual with a disability because of the disability (to the extent that said disability does not impede the individual's ability to perform the work for which the individual is applying or has been hired) of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment; (b) shall exclude or deny any qualified individual with a disability, by reason of such disability, from participation in, or the enjoyment or receipt of, any of the respective benefits, services, programs or activities offered by the Lessee or its Contractors; and (c) shall discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided thereby. The Lessee warrants that it will hold the State harmless and indemnify the State from any liability which may be imposed upon the State as a result of any failure of the Lessee or its Contractors to be in compliance with this Act, as the same applies to performance under this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease and any holdover period.
24. **Other Provisions Required By Law.** Each and every provision of law and clause required by law to be inserted in this Lease shall be deemed to be inserted herein and the Lease shall be read and enforced as though it were included herein, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the request of either party, the Lease shall forthwith be physically amended to make such insertion.
25. **Executive Orders.** This Lease is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Lease as if they had been fully set forth in it. At the Lessee's request, the Client Agency shall provide a copy of these orders to the Lessee. This Lease may also be subject to the applicable provisions of Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of this Lease as if they had been fully set forth herein. At the Lessee's request the State shall provide a copy of these orders to the Lessee.
26. **Discrepancies, Errors or Omissions.** In case of conflicts, discrepancies, errors, or omissions among the various parts of this Lease any such matter shall be

submitted immediately by the Lessee to the State for clarification. The State shall issue such clarification within a reasonable period of time. Any services affected by such conflicts, discrepancies, errors, or omissions which are performed by the Lessee prior to clarification by the State shall be at Lessee's risk.

27. **Condemnation.** If, after the execution and prior to the expiration of the Term of this Lease the entire Premises shall be appropriated by the right of Eminent Domain, this Lease shall terminate on the date of said appropriation. If a portion of the Premises is appropriated by the right of Eminent Domain, the Lease shall at the option of the State terminate. The State shall give written notice to the Lessee of termination at the address hereinafter provided. The State reserves to itself and Lessee assigns to the State all rights to damages or awards because of such taking by eminent domain.
28. **No Waiver.** The failure of the State to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect with regard to any violations thereof that had theretofore occurred.
29. **No Warranty of Title.** In executing this Lease, the State makes no claims or guarantees with respect to the title of the Premises herein Leased, and the Lessee specifically agrees that it shall in no way hold the State liable for any claims or damages for any interruption of its enjoyment or use of the Premises should any dispute to title arise during the course of this Lease.
30. **Granting Rights to Others.** Nothing contained in this Lease shall be construed to prevent the State from granting any rights to or permitting any use of the Premises it might otherwise have authority to grant or permit, provided, however, that the State agrees that it will not grant any such right or permit such use if such right or use would prevent the use and enjoyment by the Lessee of the Premises, without the approval of the Lessee which approval shall not be unreasonably withheld.
31. **Law Enforcement Patrols.** The Lessee shall maintain law enforcement patrols on the Premises.
32. **Signage.** Any signs placed on the Premises will be subject to prior written approval by the State and will be installed and maintained at the Lessee's sole cost and expense.
33. **Sovereign Immunity.** The parties acknowledge and agree that nothing in the Solicitation or the Lease shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Lease. To the extent that this section conflicts with any other section, this section shall govern.
34. **Notices.** Where written notice is required under this Lease, such notice shall be deemed sufficiently given if sent by certified mail, return receipt requested, to:

The State: Commissioner
 Department of Energy and Environmental Protection
 79 Elm Street

Hartford, CT 06106

The Lessee: First Selectman
Town of Trumbull
Trumbull Town Hall
5866 Main Street
Trumbull, CT 06611

Provided that said addresses may be changed at any time by written notification by either party, sent as above.

35. **Governing Law; Effectivity.** This Lease shall be deemed to have been made in and construed in accordance with the laws of the State of Connecticut. It is further mutually understood and agreed by the parties hereto that this Lease shall not be effective until said Lease has been approved by both the Secretary of the Office of Policy and Management and the Attorney General, all of the State of Connecticut. The date the Attorney General approves the Lease is herein referred to as the "Approval Date."
36. **No Exclusive Remedies.** No right, power, remedy or privilege of the State shall be construed as being exhausted or discharged by the exercise thereof in one or more instances, and it is agreed that each and all of said rights, powers, remedies or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to the State at law or in equity.
37. **Entire Agreement.** Subject to the provisions of Section 38 below entitled "Conditions Precedent," this Lease and all of the schedules and exhibits attached hereto together constitute the entire agreement between the parties regarding the subject matter hereof and shall supersede all previous communications, representations, and/or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the same shall be binding upon either party hereto unless in writing signed by both parties hereto.
38. **Conditions Precedent.** This Lease shall not be effective unless it is approved by the Secretary of the Office of Policy and Management and the Attorney General of the State of Connecticut.
39. **Severability.** If any part of any provision of this Lease or any other agreement, document or writing given pursuant to or in connection with this Lease shall be declared to be invalid or unenforceable under Applicable Law by a court or agency having jurisdiction over the subject of any dispute, said part shall be ineffective to the extent of such invalidity only, and the remaining terms and conditions shall be interpreted in such a manner so as to give the greatest possible effect of the original intent and purpose of the Lease.
40. **No Derogation of Police Powers.** Nothing in this Lease shall be in derogation of the valid exercise of the police powers of the State of Connecticut.
41. **Claims Against the State.** The Lessee agrees that the sole and exclusive means for the presentation of any claim against the State arising from or in connection with this Lease shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims against the State) and the Lessee further agrees not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.

42. **Forum and Choice of Law.** The parties deem the Lease to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Lease to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Lessee waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.
43. **Corporate Authority.** The Lessee represents and warrants to the State that:
- (a) it is duly and validly existing municipal corporation under the laws of the State of Connecticut and authorized to conduct its business in the State of Connecticut in the manner contemplated by this Lease;
 - (b) the Lessee has taken all necessary action to authorize the execution, delivery and performance of this lease and has the power and authority to execute, deliver and perform its obligations under this Lease;
 - (c) the Lessee has full right and authority to enter into this lease for the full term herein granted;
 - (d) the Lessee will comply with all applicable state and federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Lease;
 - (e) the execution, delivery and performance of this Lease by the Lessee will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (i) any provision of law; (ii) any order of any court or any governmental department, commission, board, bureau, agency, office, council, institution or instrumentality; or (iii) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound; and
 - (f) to the extent that the Lessee has engaged the services of any person or entity in any capacity to solicit or secure this Lease, the Lessee shall be solely responsible for the payment of any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Lease or any assignments made in accordance with the terms of this Lease. The State shall not be responsible under any circumstances for the satisfaction of such consideration.

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APPROVED PURSUANT TO CONNECTICUT GENERAL STATUTES SECTION 22a-26:

Benjamin Barnes, Secretary
Office of Policy and Management

Date: _____

APPROVED:
George Jepsen
Attorney General

By: _____
Joseph Rubin
Associate Attorney General

Date: _____