

## CONSTRUCTION CONTRACT

For Rehabilitation Improvements For Property located at:

Waterbury, Connecticut

By and Between

and

**THIS CONSTRUCTION CONTRACT** (the "**Construction Contract**") effective on the date executed by the parties hereto is by and between \_\_\_\_\_, (the "**Owner**"), and \_\_\_\_\_, a \_\_\_\_\_, duly organized and existing pursuant to the laws of the State of \_\_\_\_\_, with offices at \_\_\_\_\_ (the "**Contractor**").

### WITNESSETH THAT:

**WHEREAS**, the Owner has submitted to the Waterbury Development Corporation (the "**WDC**") a request for financial assistance in the form of a loan to implement and carry out an eligible activity under the Neighborhood Stabilization Program ("**NSP**" or the "**Program**"), NSP regulations, and Housing and Urban Development ("**HUD**") regulations for real property rehabilitation improvements (as more particularly described herein) (the "**Project**") of an existing building owned by Owner and located at \_\_\_\_\_ (the "**Property**"); and

**WHEREAS**, the City of Waterbury (the "**City**"), acting by and through the WDC (the City and the WDC may collectively be referred to as the "**City**" or the "**WDC**" as the context may require), has approved Owner's request for such financial assistance in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_); and

**WHEREAS**, the City, WDC and the Owner have entered into a NSP Assistance Agreement (the "**Assistance Agreement**"), dated \_\_\_\_\_, which is incorporated herein by reference, and which provides, inter alia, that the Project shall be bid through the City; and

**WHEREAS**, the Contractor submitted a bid to the City for the Project in response to Invitation to Bid Number \_\_\_\_\_ (the "**ITB**"); and

**WHEREAS**, the City accepted the Contractor's bid for the ITB; and

**WHEREAS**, the Owner desires to obtain the Contractor's services pursuant to the terms set forth in this Contract.

**NOW, THEREFORE**, in consideration of the mutual obligations, covenants, and promises of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Contractor hereby covenant and agree as follows:

Property Owner:

Property Address:

**1. A. Scope of Work.** The Contractor shall furnish, either by itself or through subcontractors approved by the Owner and under an agreement with the Contractor, all work, including the labor, services, equipment, materials, supplies, equipment, transportation, incidentals and other facilities and items necessary for, or incidental to, the completion of the Project, as specified in this Construction Contract and the other Contract Documents (as defined herein) and such shall be completed in a satisfactory manner, as reasonably determined by the Owner. All labor, services, equipment, materials, supplies, transportation, and incidentals shall comply with (a) any and all applicable local, state and federal laws, statutes, ordinances, rules and regulations, including without limitation all notice requirements thereunder, (b) the provisions of this Construction Contract and the Assistance Agreement, and (c) generally accepted professional standards.

The Project consists of a ( ) unit multifamily housing complex located at the Property to be rehabilitated in accordance with the drawings and specifications (the "**Drawings and Specifications**") attached hereto as **Attachment A, Item IV**, and made a part hereof.

**B. Attachments.** The following Attachments are attached hereto and made a part hereof:

**Attachment A** shall consist of the following bid documents (the "Bid Documents"):

- Item I: ITB
- Item II: Instructions to Bidders
- Item III: Bid Form/Proposal and attached Schedules
  - a. Debarment Certificate
  - b. Annual Statement of Financial Interests
  - c. Disclosure and Certification Affidavit
  - d. Contractor's Certification;
  - e. Contractor's Professional/Trade License;
  - f. Intentionally Omitted
  - g. Intentionally Omitted
  - h. Contractor's Qualification Statement; and
  - i. Bid Bond (if any)
- Item IV: Drawings and Specifications
- Item V: Davis-Bacon Prevailing Wage Rates
- Item VI: Corporation Resolution (if applicable)

**Attachment B** shall consist of the Assistance Agreement;

**Attachment C** shall consist of all required insurance certificates; and

**Attachment D** shall consist of any and all other miscellaneous required documentation.

**C. Interpretation.** This Construction Contract, the Attachments hereto, the Assistance Agreement, all applicable federal, state and local statutes, regulations, ordinances, and any permits and licenses required for the Project are together deemed the Contract Documents (the "**Contract Documents**"). The Owner's record copy of the Contract Documents shall control and shall be effective and binding on the Contractor. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. Insofar as possible, all requirements, terms, conditions and provisions of the Contract Documents shall be construed and interpreted consistently. To the extent any activity or requirement is not specifically called out, but is necessary in Owner's reasonable judgment to the

performance of the work, or to complete the work and/or Project, such activity or requirement shall be deemed to have been implied by the parties hereto and called for just as if it had been expressly set forth at length in the Contract Documents. In any case of inconsistency, conflict or ambiguity between, or among the Contract Documents, the provision in the component part of the Contract Document first enumerated below shall govern over any other component part which follows it numerically.

1. Assistance Agreement (and addenda or amendments thereto);
2. Construction Contract (and addenda or amendments thereto);
3. Bid Documents;
4. Specifications;
5. Drawings;
6. Federal, state and local laws, regulations, charter and/or ordinances; and
7. Any permits and/or licenses required for the Project.

**2. A. Contractor Representations Regarding Qualification and Accreditation.**

The Contractor represents that it, its employees, its subcontractors and its subcontractors' employees are licensed to properly and punctually perform the scope of work set forth in this Construction Contract in accordance with the terms and conditions of the Contract Documents. The Contractor further represents that it, its employees, its subcontractors and its subcontractors' employees have the requisite skill, expertise and knowledge necessary to properly and punctually perform the scope of work set forth in this Construction Contract in accordance with the terms and conditions of the Contract Documents. Contractor understands, acknowledges and agrees that the Owner is relying upon these representations.

**B. Contractor Representations regarding Personnel.** The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the work under this Construction Contract. As set forth above, all the work required hereunder shall be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under federal, state and/or local law to perform such work. Contractor understands, acknowledges and agrees that the Owner is relying upon these representations.

**3. Responsibilities and Warranties of the Contractor.** The Contractor agrees to properly and punctually implement the work required in the manner herein provided. The Contractor shall, in addition to any other responsibilities set forth in this Construction Contract, perform the following coincident with the performance of this Construction Contract:

**A. Due Diligence Obligation and Contractor Warranties.** The Contractor acknowledges its responsibilities to examine and to be thoroughly familiar with the City's Bid Documents, including, but not limited to the Drawings and Specifications, any addenda thereto, and any other documents for the ITB. The Contractor hereby warrants and represents that, prior to the submission of its bid during the bid process, Contractor reviewed or was afforded the opportunity by the City and the Owner to review all physical items, facilities, services and functions essential to the satisfactory performance of the work required ("**Due Diligence**") and thereby certifies that all such items, facilities, services and functions are included in this Construction Contract. Contractor warrants that:

- (1) Contractor conducted or had the opportunity to conduct all Due Diligence prior to the submission of its bid and, accordingly, any additional costs, services or products resulting from Contractor's failure to complete Due Diligence prior to submission of its bid shall be borne solely by the Contractor. Furthermore the Contractor had the opportunity during the bid process to ask any questions it saw fit and to review the responses from the City;

**NSP CONSTRUCTION CONTRACT (Owner Occupied)**

**Property Owner:**

**Property Address:**

(2) Contractor's failure or omission to make investigation and verification of data shall in no way be cause for future claim of ignorance of such data or conditions nor shall such failure to investigate and verify be the basis for any claim whatsoever, monetary or otherwise;

(3) Contractor is solely responsible for resolving any issues resulting from its failure to conduct Due Diligence and it shall assume any and all resulting costs it incurs during the duration of the Project;

(4) Contractor was responsible for specifying any changes and disclosing any associated new costs prior to submittal of its bid. In the event Contractor failed to specify any changes and/or disclose any such new cost prior to the submittal of its bid, Contractor hereby covenants that it shall remain solely responsible for, and shall absorb, those non-disclosed costs and any costs associate with any such non-specified changes;

(5) Contractor has familiarized itself with the nature and extent of the Contract Documents, the Project, the Program, including the Housing and Economic Recovery Act of 2008 ("**HERA**") as amended by the American Recovery and Reinvestment Act of 2009 ("**ARRA**") and NSP regulations (including 73 FR 58330 (October 6, 2008) as amended) and any and all applicable HUD regulations, the locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Project;

(6) Contractor has given the Owner and the WDC written notice of any conflict, error or discrepancy that Contractor discovered in the Bid Documents and agrees that such Bid Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Project;

(7) Contractor has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the work which were utilized in the preparation of the Drawings and Specifications;

(8) Contractor has made or caused to be made examinations, investigations, measurements, tests and studies of any applicable reports and related data as it deems necessary for ensuring performance of the work at the compensation amount hereinafter set forth within the Contract Time (as defined below) and in accordance with the other terms and conditions of this Construction Contract and all other Contract Documents; and certifies that no additional examinations, investigations, tests, reports or similar data are or will be required by Contractor for such purpose; and

(9) Contractor shall not take advantage of any obvious error or apparent discrepancy in this Construction Contract and/or any of the Contract Documents. Notice of any such error or discrepancy discovered shall be given immediately in writing to the Owner, who shall make such corrections and interpretations as may be deemed necessary for the completion of the Project in a satisfactory and acceptable manner.

**B. Safety.** Contractor shall perform all work in a safe and professional manner in full compliance with local, state and federal health and safety regulations. Contractor shall immediately correct at its sole cost and expense any dangerous condition caused by or resulting from its work. If it

**NSP CONSTRUCTION CONTRACT (Owner Occupied)**

**Property Owner:**

**Property Address:**

fails to correct, or to act diligently to correct, any condition which the Owner reasonably believes to be a hazard to persons or property, then immediately upon oral or written notice to any supervisory or similar personnel of Contractor, the Owner may, but shall not be required to, correct same at Contractor's expense. The Owner shall confirm in writing any oral notice given within five (5) business days thereafter.

**C. Storage.** In the event the Project site has insufficient, inadequate, and/or improper storage space, it shall be Contractor's responsibility to secure, provide and maintain at the Contractor's sole cost and expense: (i) adequate off-site storage space for equipment, materials, incidentals, etc., and (ii) all associated delivery and transportation services. Contractor shall assume full responsibility for equipment, materials, incidentals, etc. until both title and risk of loss pass to the Owner pursuant to Section 8 hereof.

**D. Working Hours.** The Contractor shall coordinate its schedule so that work on and at the Project site is performed during reasonable times of the day in conformance with any and all State statutes and/or City ordinances. This provision shall not excuse the Contractor from proper and timely performance of the work under this Construction Contract.

**E. Cleaning Up.** The Contractor shall at all times keep the Project site free from accumulation of waste materials or rubbish caused by Contractor's employees or subcontractors, and at the completion of the work shall remove all rubbish, tools, scaffolding and surplus materials from and about the Project site and shall leave the work site "broom clean" or its equivalent, unless more exactly specified in any Contract Document. In case of dispute, the Owner may remove the rubbish and charge the cost to the Contractor.

**F. Intentionally Omitted.**

**G. Standard of Performance.** All Contractor labor, materials, supplies, components, equipment, reports, plans, specifications, drawings, deliverables, incidentals, etc., required to be furnished or delivered under this Construction Contract and/or the Contract Documents shall conform in all respects with the requirements set forth in this Construction Contract and/or the Construction Documents and shall meet or exceed those standards generally recognized in the Contractor's craft and trade in the State of Connecticut. Specified manufacturer and/or brand name substitution desired by the Contractor shall be made only with the prior written consent of the Owner.

In carrying out the Project, the Contractor must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor, nor with the normal routine of Owner in Contractor's operation at the site.

**H. Contractor's Employees.** The Contractor shall at all times enforce strict discipline and good order among its employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned. The Contractor shall not, without the prior written approval of the Owner, substitute, terminate, replace or otherwise remove any Contractor employee or subcontractor expressly named, identified or required in this Contract.

**I. Subsurface/Unknown Site Conditions.** If Project site conditions are encountered which are (1) subsurface or otherwise concealed physical conditions or other conditions which differ materially from those indicated in Contract Documents, or (2) unknown conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent or common in construction activities of the character provided for in this Construction Contract,

then prompt notice by the observing party shall be given to the other party to this Construction Contract before Project site conditions may be disturbed. The Contractor shall thereafter wait for written instructions from the Owner before proceeding with regard to such conditions.

**J. Surveys.** All surveys (if any) required under this Construction Contract shall be performed by a State of Connecticut duly licensed land surveyor. Unless expressly stated to the contrary in Section 1 and its Attachments, the Contractor shall perform all layout work, all field measurements and all construction staking required, necessary or prudent for the satisfactory prosecution of the Scope of Services.

**K. Permits and Licenses.** Unless expressly stated to the contrary in **Attachment A**, the Contractor shall secure and obtain all permits and all licenses required, or necessary, or prudent for the performance of the Contractor's work, and for the Owner's occupancy, use, and operation of the Project.

**L. Manufacturer's Directions.** Where it is required in this Construction Contract and/or the Contract Documents that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's directions, specifications or instructions, it shall be construed to mean that the said application or installation by the Contractor shall be in strict accord with such printed directors, specifications and/or instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the Project site. One (1) copy each of such instructions shall be furnished by Contractor to the Owner.

**M. Review by the Owner, the City, the WDC, State of Connecticut and the Secretary.** The Contractor shall permit the Owner, the City, the WDC, the State of Connecticut and/or the Secretary of HUD and their duly authorized representatives and agents to review, at any time, all work performed under the terms of this Construction Contract and/or the Contract Documents at any stage of the Project.

**N. Records Maintenance.** The Contractor shall maintain or cause to be maintained all records, books or other documents relative to charges, costs, expenses, fees, alleged breaches of this Construction Contract, settlement of claims or any other matter pertaining to the Contractor's demand for payment.

**4. Responsibilities of the Owner. Reservation of Rights.** Upon receipt of Contractor's written request for specific information, the Owner, as appropriate, will provide the Contractor with existing documents, data and other materials that the Owner believes are necessary and appropriate to the work to be performed by the Contractor hereunder and the Owner will endeavor to secure, where feasible and where the Owner believes it is necessary and appropriate, materials or information from other sources requested by the Contractor for the purpose of carrying out the work under this Construction Contract.

The Owner may, in its sole discretion, designate person(s) to act as its Project engineer(s) and/or manager(s) and the Owner may, in its sole discretion, define such person(s) authority and responsibilities.

The Owner reserves the right to (a) perform work related or unrelated to the Project with Owner's own forces adjoining, adjacent to, or in the vicinity of, the Project site and/or (b) let separate contracts related or unrelated to the Project for work and services adjoining, adjacent to, or in the vicinity of, the Project site. In such event, the Contractor shall afford all such parties reasonable opportunity for storage of materials and equipment and for the uninterrupted provision and delivery of such parties' work and/or

services. The Contractor shall cooperate with such parties and in the case of a dispute, the decision of the Owner shall be complied with by all.

**5. Contract Time.** The Contractor shall complete all work and services required under this Construction Contract within ( ) consecutive calendar days of execution of this Construction Contract by the Owner ("Contract Time").

**Time is and shall be of the essence for all Project milestones, intermediate completion dates and the final completion date for the Project.** The final completion date for the Project shall not occur unless and until the work on the Project has progressed to the point where, in the opinion of the Owner, the Project is complete in accordance with the terms and conditions of the Contract Documents such that it is ready for final payment as evidenced by the Owner's approval of final payment.

The Contractor further agrees that the Project shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner that the Contract Time is reasonable for the completion of the Project.

Within one (1) week after execution of this Construction Contract by Owner, and prior to the commencement of any work on the Project site, the Contractor shall submit for the Owner's approval a construction progress schedule. On a monthly basis, the Contractor shall deliver to the Owner a written status report setting forth an analysis and critique of the Contractor's compliance with said schedule.

**6. Compensation.** As provided in the Assistance Agreement contained in **Attachment B**, the WDC shall, on behalf of the Owner, compensate the Contractor for satisfactory provision of all of the goods and services set forth in this Construction Contract as set forth in this Section 6 to the extent of the amount of the **loan** to the Owner pursuant to the Assistance Agreement. No claims for additional compensation will be considered for conditions made known to the Contractor prior to bidding. No claims for additional compensation will be considered on account of failure of the Contractor to completely inform itself as required herein above.

**A. Contract Price.** The fee payable to the Contractor hereunder shall not exceed Dollars (\$) (the "**Contract Price**") as increased or decreased by virtue of any change orders as provided for elsewhere herein.

**B. Payment.** The WDC shall make payment, on behalf of the Owner, to the Contractor as provided for herein and Owner shall pay to the Contractor the difference, if any, between the Contract Price and the amount of the **loan** from the WDC to the Owner pursuant to the Assistance Agreement. Such payment of the Contract Price by the Owner, if applicable, and the WDC, on behalf of the Owner, to the Contractor hereunder shall be made as follows:

[(1) Upon Completion of the Project work and services to be provided under this Construction Contract and the other Contract Documents in compliance with the Contract Documents for the following percentages of the total work as verified in writing to the Owner by the Contractor and the WDC construction specialist:

a. insert: percentage of total Project work completed;

b. insert: percentage of total Project work completed;

c. insert: percentage of total Project work completed;

d. insert: percentage of total Project work completed;

(2) Delivery to the Owner by Contractor of evidence of Contractor, subcontractor and Project materials payment for each such percentage of completion in accordance with the provisions of this Section 6; and

(3) Delivery to the Owner by Contractor at appropriate times of all certifications, documentation, approvals, or any item required for payment according to this Construction Contractor and the Contract Documents, as applicable.]

**OR**

[(1) Completion in compliance with the Contract Documents of the Project work and services to be provided under this Construction Contract and the other Contract Documents, as verified in writing to the Owner by the Contractor and the WDC construction specialist for each of the following milestones:

a. [insert milestone];

b. [insert milestone];

c. [insert milestone];

d. [insert milestone];

(2) Delivery to the Owner by Contractor of evidence of Contractor, subcontractor and Project materials payment for each such milestone in accordance with the provisions of this Section 6; and

(3) Delivery to the Owner by Contractor at appropriate times of all certifications, documentation, approvals, or any item required for payment according to this Construction Contractor and the other Contract Documents, as applicable.]

**C. Limitation of Payment.** Compensation to the Contractor is limited to those fees set forth in Section 6.A above and is further limited to work (i) performed in fact, (ii) conforming to this Construction Contract and the Contract Documents, and (iii) accepted in writing by the Owner. Such compensation shall be paid as set forth in Section 6.B by Owner and/or WDC, on Owner's behalf, upon Owner's and WDC's review and approval of the Contractor's invoices for payment and review of the Contractor's work; provided, however, that should there be a disagreement between the WDC and Owner as to what payment amount should be made to the Contractor, the WDC's decision shall prevail.

In that this Construction Contract is funded, in whole or in part, by federal and/or state monies, grants, loans, etc., all payment(s) shall fully comply with all relevant federal and state statutes and regulations.

**D. Retainage.** Retainage in the amount of ten percent (10%) of any payment may be withheld in the WDC's sole discretion until the expiration or release of any mechanic's, laborer's,

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**Property Owner:**

**Property Address:**

materialman's, warehouseman's or other lien filed against the Property or ninety-one (91) days after final acceptance by the Owner of all work covered by this Construction Contract, whichever is later.

**E. Bid Costs.** All costs of the Contractor in preparing its bid for the ITB shall be solely borne by the Contractor and are not included in the compensation to be paid to the Contractor under this Construction Contract or any other agreement.

**F. Payment for Services, Materials, Appliances, Employees.** The Contractor shall be responsible to the Owner for the suitability of services, materials and equipment furnished to comply fully with the requirements set forth in this Construction Contract and the other Contract Documents. The Contractor shall promptly pay all of its employees as their pay falls due, shall pay promptly as they fall due all bills for subcontractors, materials, supplies and services going into the work, and all bills for insurance, bonds, Worker's Compensation coverage, Federal and State Unemployment Compensation, and Social Security charges applicable to this Project. Before any progress payment, if applicable, and before final payment is made, the Contractor shall furnish to the Owner a sworn, notarized, affidavit stating that all of the foregoing payment obligations have been fully completed.

**G. Liens.** Payment to Contractor hereunder shall not become due until the Contractor shall deliver to the Owner a complete release of any and all liens or potential liens from itself and/or any and all of its subcontractors arising out of this Construction Contract, or receipts paid in full in lieu thereof, and, in either case, an affidavit that so far as the Contractor has knowledge or information, the releases and receipts include all the labor and materials for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify the Owner against any such lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner any and all money that the City, or the Owner may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

**H. Permits.** No payments under this Construction Contract shall be made to Contractor until, where applicable, all permits required for the work have been obtained by the Contractor and provided to the Owner.

**I. Certificate of Completion.** Upon the Contractor's (i) completion of all Project milestones, (ii) substantial completion of the Project, and (iii) final completion of the Project, the Contractor shall file with the Owner a written, notarized affidavit on a form to be provided by the Owner. The Owner reserves the right to verify or challenge by any reasonable means the accuracy of said affidavit. A copy of said affidavit shall be filed by the Owner with the WDC.

**J. Payment.** The payment by the City acting by and through the WDC of any financial assistance for the Project shall be paid pursuant to and in accordance with the provisions of the Assistance Agreement between the City, the WDC and the Owner. In no event shall the City and/or the WDC have any obligations for payment to the Contractor for the Project or otherwise other than pursuant to such Assistance Agreement and the Owner and Contractor hereby so acknowledge and agree.

**7. Contractor Warranty.** The Contractor warrants to the Owner that all materials, supplies, components, equipment, etc. furnished under this Construction Contract shall be new and of specified quality or good quality if not specified, except as otherwise expressly stated and permitted by the Owner elsewhere in this Construction Contract. The Contractor warrants that none of its work shall be defective. The Contractor shall be liable to repair and install and/or replace without charge to Owner any service, component, equipment or part thereof which is defective or does not conform with this Construction

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**Property Owner:**

**Property Address:**

Contract for a period of the greater of (i) one (1) year after the final completion date of the Project, or (ii) that time period or date expressly stated elsewhere in this Construction Contract.

The Contractor further warrants that all materials, supplies, services, components, equipment, reports, plans, drawings, deliverables, incidentals, etc., shall be free from any and all defects caused by faulty design, faulty material or poor workmanship. The Contractor shall supply to the Owner copies of any written manufacturer's warranties and guarantees.

The Contractor's foregoing warranty obligations are in addition to, and not a limitation of, any other remedy stated in this Construction Contract or otherwise available to the Owner under applicable law.

**8. Passing of Title and Risk of Loss.**

**A.** Owner's beneficial use of Project equipment, materials, site-work, etc. prior to the Contractor's final completion of the Project or prior to the final payment for the Project shall neither act to vest title in the Owner nor act to transfer risk of loss from the Contractor to the Owner. Said title and risk shall pass to the Owner upon the final payment for the Project.

**B.** Contractor and its insurer shall assume the risks of loss or damage to the equipment up to and including the date title passes, except that the Owner shall be responsible for loss or damage caused by the Owner's gross negligence.

**C.** After Project equipment, materials, etc. are delivered to the Project site and become operable or functional, the Contractor shall not thereafter remove any such equipment, materials, etc. from the Project site without securing the prior written consent of the Owner.

**9. Indemnification.**

**A.** The Contractor shall defend, indemnify, and hold harmless the Owner from and against all claims, suits, damages, losses, judgments, costs and expenses including attorney's fees arising out of or resulting from the performance of the work pursuant to this Construction Contract, provided that any such claims, suits, damages, losses, judgments, costs or expenses (a) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the services itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any willful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

The Contractor shall further defend, indemnify and hold harmless the Owner from and against any and all fines, penalties or other amounts imposed upon any of them for violation of any federal or state statute or regulation or the City Charter or any City ordinance if caused in whole or in part by any willful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

**B.** In any and all claims against the Owner by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Section 9.A, above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the

Contractor or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

C. The Contractor expressly understands and agrees that any performance bond or insurance protection required by this Construction Contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to defend, indemnify and keep and save harmless the Owner, as provided herein.

D. The Contractor shall, for all time, secure to the Owner the free and undisputed right to the use of any and all patented articles and methods used in the work and shall defend, at Contractor's own expense, any and all suits for infringement or alleged infringement of such patents, and in the event of an adverse award under patent suits, the Contractor shall indemnify and pay such awards and hold the Owner harmless in connection with any patent suits that may arise as a result of installations made by the Contractor and as to any award made thereunder.

**10. [NOTE: This Section is optional, only use for contracts for \$50,000 or more.] Construction Contract Bonds.** The Contractor shall furnish to the Owner, prior to the execution of this Construction Contract, both a performance bond and a payment bond, each bond written for a penal sum equaling 100% of the Contract Price in a form and with a surety acceptable to the Owner. The bonds shall continue in effect for the greater of (i) the warranty period set forth in Section 7 hereinabove, or (ii) 365 calendar days after the final completion date referenced elsewhere in this Construction Contract. The Contractor shall also furnish to the Owner, prior to the execution of this Construction Contract, a Maintenance Bond equaling five percent (5%) of the total Contract Price.

**11. Contractor's Insurance.**

The Contractor shall procure and maintain for the durations set forth in the Assistance Agreement and Construction Contract, the types of insurance policies described hereunder in form, substance, and quality acceptable to the City and the WDC, in amounts no less than the stated limits, against claims for injuries to persons or damages to property which may arise from or in connection with the work described hereunder and/or the condition of the property.

Each policy shall be issued by an insurance company satisfactory to the City and/or the WDC, licensed to do business in the State of Connecticut by the Connecticut Department of Insurance, and having a Best Rating of A-, VII, equivalent or as otherwise approved by the City and/or the WDC

The Contractor shall assume any and all deductibles in the insurance policies described hereunder.

The Contractor's Insurance shall be primary coverage and Contractor and Contractor's respective insurers shall have no right of subrogation recovery or subrogation against the City, WDC, the State of Connecticut, or their respective officials and employees.

Without limiting the Contractor's obligation to procure and maintain insurance for the durations set forth above, no insurance policy shall be suspended, voided, cancelled or reduced except after thirty (30) days prior notice by certified mail has been given to the City and the WDC with the exception that a ten (10) day prior written notice by certified mail return receipt requested for nonpayment of premium is acceptable.

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**Property Owner:**

**Property Address:**

The Contractor shall not commence work until all insurance required under the Construction Contract and/or in the Assistance Agreement has been obtained by the Contractor and such insurance has been approved by the City and/or the WDC.

The Contractor shall not commence work or allow any subcontractor to commence work on any subcontract until all insurance required by the Construction Contract or the Assistance Agreement of any such subcontractor has been so obtained and certificates evidencing such insurance have been approved by the City and/or the WDC. The Contractor is responsible for any insurance that any subcontractor, consultant, agent of contractor or other contractor representative (collectively the "**Subcontractor**") should have prior to commencement of Subcontractor's work. Any financial and/or legal responsibility that may arise due to the Contractor's Subcontractor not having adequate insurance is the responsibility of the Contractor and not the City, the WDC or the State.

At no additional cost to the City and/or the WDC beyond the Contractor's total bid price, the Contractor shall purchase and maintain the insurance coverages set forth hereunder which shall protect the City, the WDC and the State of Connecticut from claims which may arise out of or result from the Contractor's obligations under the Construction Contract, whether such obligations are the Contractor's or a Subcontractor's or of a person or entity directly or indirectly employed by said Contractor or Subcontractor, or by any person or entity for whose acts said Contractor or Subcontractor may be liable.

The "City of Waterbury", the "Waterbury Development Corporation" and the "State of Connecticut" shall be named as Additional Insured on all liability policies. The insurance afforded to the City, the WDC and/or the State as additional insured shall be primary insurance and the coverage and limits provided under the Contractor's policies shall not be reduced or prorated by the existence of any other insurance applicable to any loss the City, the WDC and/or the State of Connecticut as additional insured may have suffered.

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. If any insurance required herein is to be issued or renewed on a claims made form (as opposed to an occurrence form), the retroactive date for coverage shall be no later than the Contractor's date of execution of the Construction Contract and shall provide that in the event of cancellation or non-renewal of coverage, the discovery period (or extended reporting period) for insurance claims ("Tail Coverage") shall be available for at least 60 months following the termination date of the Construction Contract.

The following policies with stated limits shall be maintained, in full force and effect, at all times during which the services are to be performed by the Contractor; provided however, that if this Project is (i) financial assistance of less than \$100,000; (ii) a planning grant, or (iii) a predevelopment loan, only items A and B as set forth below shall apply:

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A. Commercial General Liability Insurance: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and Operation, Independent Contractors, Product and Completed Operations and Contractual Liability. If a general aggregate is used, the general aggregate limit shall apply separately to the Construction Contract or the general aggregate limit shall be twice the occurrence limit.

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**Property Owner:**

**Property Address:**

B. Workers' Compensation and Employer's Liability: Statutory coverage in compliance with compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with a minimum limit of \$100,000 each accident, and \$500,000 Disease – Policy limit, \$100,000 each employee.

C. Automobile Liability Insurance: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/Contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.

D. Directors and Officers Liability: \$1,000,000 per occurrence limit of liability; provided, however, that Directors and Officers Liability insurance shall not be required for limited liability corporations, limited partnerships or sole proprietorships.

E. Construction Contractors Pollution Liability Insurance: If required by City Risk Manager, \$1,000,000 per Occurrence (or Per Claim, if Claims Made) / \$2,000,000 Aggregate coverage.

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In the event the Contractor fails to maintain the minimum required coverage as set forth herein, the City and/or the WDC may at the City and the WDC's option purchase same, and offset the Contractor's invoices for the cost of said insurance.

Prior to the execution of the Construction Contract, the Contractor shall furnish to the Owner certificate(s) of insurance verifying the above coverages, including the naming of the City, the WDC, and the State as additional insured when applicable, as follows: "The City of Waterbury, the Waterbury Development Corporation, and the State of Connecticut are listed as additional insured as their interests may appear". The Contractor must supply replacement/renewal certificates at least 30 days prior to the expiration of the policy(ies). Said certificates shall contain a provision that coverage afforded under the policies shall not be cancelled or reduced for any reasons unless notice of no less than 30 calendar days has been mailed to the City and the WDC.

Upon request, the Contractor shall deliver to the City and the WDC a copy of the Construction Contractor's insurance policies and endorsements and riders.

No deviance shall be allowed from the insurance coverage and/or requirements set forth herein unless approved, in writing, by and in the sole discretion of the Risk Manager of the City of Waterbury.

**12. Conformance with Federal, State and Other Jurisdictional Requirements.** By executing this Construction Contract, the Contractor represents and warrants that, at all pertinent and relevant times to the Construction Contract, it has been, is and will continue to be in full compliance with all applicable statutes, acts, ordinances, guidelines, resolutions, orders, judgments, decrees, injunctions, rules, and regulations of all government authorities applicable to performance by the Contractor of work hereunder, including those having jurisdiction over its registration and licensing to perform work hereunder; including, but not limited to, the following: EQUAL EMPLOYMENT OPPORTUNITY; COPELAND ANTI-KICKBACK ACT, as supplemented in the Department of Labor Regulations (29 CFR Part 3); DAVIS BACON ACT as supplemented by Department of Labor Regulations (29 CFR Part 5); Section 103 and 107 of the Contract Work Hours and Safety Standards Act, as supplemented by the

Department of Labor Regulations (29 CFR Part 5); the HOUSING and COMMUNITY DEVELOPMENT ACT of 1974, as amended; and the FAIR LABOR STANDARDS ACT of 1938, as amended (29 USC 201, et seq.). All applicable sections of the City Charter and Code of Ordinances are incorporated by reference and made a part hereof.

The Contractor shall conform, and shall ensure that its subcontractors shall conform, to the labor laws of the State of Connecticut, and all other laws, ordinances, and legal requirements affecting the work in Connecticut. The Contractor is aware of, and shall comply with, the provisions of Title 31, §53 of the Connecticut General Statutes, latest revision (the "Act"), concerning the payment of minimum wages for work on public facilities, if applicable. The provisions of the Act are incorporated by reference and made a part of this Contract.

**13. Discriminatory Practices.** In performing the work under this Construction Contract, Contractor shall not discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, sex, age, religious creed, disability, national origin or ancestry, marital status, family status, prior psychiatric treatment, health care, military status or source of income or because of a handicap that is unrelated to the employee's or the applicant's ability to perform the duties of a particular job or position. Subcontracts with each subcontractor shall contain a provision requiring non-discrimination in employment as herein specified. This covenant is required pursuant to §93.04 of the Code of Ordinances of the City of Waterbury and any breach thereof may be regarded as a material breach of this Construction Contract. Said provisions with subcontractors shall require conformity and compliance with all local, state and federal laws, rules and regulations and Executive orders pertaining to discrimination and equal opportunity requirements.

**A. Discrimination Because of Certain Labor Matters.** No person employed on the work covered by this Construction Contract shall be discharged or in any way discriminated against because such person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or related to the labor standards applicable hereunder to his or her employer.

**B. Equal Opportunity.** In its execution of the performance of this Construction Contract, the Contractor shall not discriminate and shall comply with applicable laws prohibiting discrimination on the grounds of race, color, religion, sex, national origin or citizenship status, age or handicap. The Contractor agrees to comply with all local, state and federal laws, rules and regulations and Executive orders pertaining to discrimination and equal opportunity requirements, and will require the same of all subcontractors.

**C. Nondiscrimination.** Contractor must comply with, and shall ensure that its subcontractors comply with, any and all federal, state, and local laws with regard to discrimination and Contractor and its subcontractors shall not discriminate against any persons on account of race, creed, color, ancestry, religion, sex, familial status, lawful source of income, physical or mental disability, sexual orientation or national origin in its performance of this Construction Contract and the completion of the Project.

**(1) State Nondiscrimination Contract Language.** Contractor must comply with, and shall ensure that its subcontractors comply with, the provisions of CGS §§4a-60 and 4a-60a, as applicable, including (for purposes of this Section, any reference to "contractor" shall mean "**Contractor**" and any reference to "contract" shall mean "**Construction Contract**");

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*Specifically, but not by way of limitation, the Contractor agrees to the following:*

*Compliance with Nondiscrimination and Affirmative Action in accordance with Connecticut General Statute section 4a-60.*

*The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The contractor further agrees to take affirmative action to insure that applicants with job related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved; (b) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission; (c) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (d) the contractor agrees to comply with each provision of this Article and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f; (e) the contractor agrees to provide the commission on human rights and opportunities with such information requested by the commission, and permit access to pertinent books, records, and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56. If the contract is a public works contract, the contractor agrees and warrants that it will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.*

*Determination of the contractor's good faith efforts shall include but shall not be limited to the following factors: the contractor's employment and subcontracting policies, patterns, and practices; affirmative advertising, recruitment, and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority/women business enterprises in public works projects.*

*The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.*

*The contractor shall include the provisions of this section in every subcontract or purchase order entered into in order to fulfill any obligation of this Agreement with the State and such provisions shall be binding on a subcontractor, vendor, or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General*

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*Statutes section 46a-56; provided if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.*

*The contractor agrees to comply with the regulations referred to in this section as they exist on the date of this Agreement and as they may be adopted or amended from time to time during the term of this Agreement and any amendments thereto.*

*Further Agreements re Compliance with Nondiscrimination.*

*The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; the contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f of the Connecticut General Statutes and with each regulation or relevant order issued by said commission pursuant to section 46a-56, and sections 46a-68e and 46a-68f of the Connecticut General Statutes of the Connecticut General Statutes; the contractor agrees to provide the commission with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56 of the Connecticut General Statutes.*

*The contractor shall include the provisions of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56 of the Connecticut General Statutes; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.*

**(2) Federally Assisted Construction Contracts.** Federally assisted Construction Contracts subject to Federal Executive Order 11246, as amended, shall be subject to the implementing regulations at 41 CFR Chapter 60. Contractor must comply, and ensure that its subcontractors comply, with the following equal opportunity clause (for purposes of this Section, any reference to "contractor" shall mean "**Contractor**" and any reference to "contract" shall mean "**Construction Contract**"):

*During the performance of this contract, the contractor agrees as follows:*

*(1) The contractor will not discriminate against any employee or applicant for*

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*employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, and to make available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.*

*(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.*

*(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or workers' representatives of the contractor's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*(4) The contractor will comply with all provisions of [Federal] Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the [United States] Secretary of Labor.*

*(5) The contractor will furnish all information and reports required by [Federal] Executive Order 11246 of September 24, 1965, and by the rules and regulations, and orders of the [United States] Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the [United States] Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

*(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further [United States] Government contracts in accordance with procedures authorized in [Federal] Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation or order of the [United States] Secretary of Labor, or as otherwise provided by law.*

*(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the [United States] Secretary of Labor issued pursuant to Section 204 of [Federal] Executive Order 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the*

*United States to enter into such litigation to protect the interest of the United States."*

**D. Labor Provisions.** Construction Contractors shall comply, and shall ensure that its subcontractors comply, with the governing federal labor standards and regulations as set forth in 29 CFR Parts 1, 3, 5 and 7, and any applicable provisions of CGS §31-53.

(1) The Contractors shall comply, and shall ensure that its subcontractors comply, with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in regulations at 29 CFR Part 3; and

(2) Contractor shall comply, and shall ensure that its subcontractors comply, with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) and shall cause payment to all laborers and mechanics (other than volunteers and members of an eligible family who provide labor in exchange for acquisition of a property for home ownership or provide labor in lieu of, or as a supplement to, rent payments) to be at rates not less than those contained in the wage determination of the Secretary of Labor and Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330) as supplemented by 29 CFR Part 5; and

(3) Contractor shall comply, and shall ensure that its subcontractors comply, with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in regulations at 41 CFR Chapter 60; and

(4) If this Construction Contract is in excess of \$100,000, Contractor shall comply, and shall ensure that its subcontractors comply, with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations at 40 CFR Part 50.

#### **14. Compliance with Affirmative Action Program.**

**A.** The Contractor, for itself and its successors, assigns and subcontractors, hereby agrees that with respect to its performance of this Construction Contract, it and its successors, assigns and subcontractors, shall comply with all provisions of Executive Order #11246 of September 24, 1965, entitled, "Equal Employment Opportunity", as amended by Executive Order #11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60), and all of the rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity in effect as of the date of this Agreement; or "Equal Employment Opportunity under HUD Contracts and HUD Assisted Construction Contracts", dated December 31, 1971, whichever is applicable, as the Program may hereinafter be amended, Part A, Page 4 (a) modified and/or superseded by actions of the City, State of Connecticut (hereinafter referred to as "State") and/or the Government of the United States (hereinafter referred to as the "United States").

**B.** Section 3 of the Housing and Urban Development Act of 1986 (12 USC 1701u), as amended, and the regulations in 24 CFR Part 135, require that, to the greatest extent feasible, opportunities for training and employment, arising in connection with any project assisted by the program, be given to lower income residents of the project area. Contracts awarded in connection with the program shall, to the greatest extent feasible, be awarded to eligible business concerns which are located in, or are owned in substantial part by persons residing in the project area per the following:

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(1) The work to be performed under this Construction Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for the work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Project.

(2) The parties to this Construction Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and order of the Department issued thereunder prior to the execution of this Construction Contract. The parties to this Construction Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

(3) The Contractor will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(4) The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under CFR, Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(5) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns.

Failure to fulfill these requirements shall subject the applicant or recipient, the Contractor and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR, Part 135.

**15. Set-Aside Compliance.** All Contractors must comply with 24 CFR 85.36 (e) (Contracting with small and minority firms, women's business enterprise and labor surplus area firms).

**A.** The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

**B.** Affirmative steps shall include:

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- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (5) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

**16. Federal Requirements.** Owner and Contractor further certify that no Federal appropriated funds have been paid or will be paid, by or on behalf of them, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

**17. Termination.**

**A. Termination of Construction Contract for Cause.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Construction Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner, in its sole discretion, shall thereupon have the right to terminate this Construction Contract by either (i) giving written notice to the Contractor of a date certain by which Contractor shall, to the written satisfaction of the Owner, cure a default, after which and without further action by any party, such termination shall automatically become effective and binding, or (ii) giving written notice to the Contractor specifying the effective date of such termination at least five (5) days before the effective date of such termination.

In the event of a termination, all finished or unfinished documents, data, studies, reports, plans, specifications, drawings, supplies, services, etc. prepared by or on behalf of the Contractor under this Construction Contract and/or the Contract Documents shall, at the option of the Owner, become the Owner's property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed to such termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of this Construction Contract by the Contractor, and the Owner may withhold or cause to be withheld any payments to the Contractor for the

purpose of setoff until such time as the exact amount of damages due the Owner from the Contractor is determined.

**B. Termination for Convenience of the Owner.** The Owner may terminate this Construction Contract at any time for the convenience of the Owner, by a notice in writing from the Owner to the Contractor. If this Construction Contract is terminated by the Owner as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Construction Contract, less payments of compensation previously made. In such event, the Contractor shall have no recourse against the Owner.

**C. Termination for Non-Appropriation or Lack of Funding.** The Contractor and Owner acknowledge that the City is a municipal corporation and that this Construction Contract is subject to the appropriation and disbursement of funds by the City sufficient for this Construction Contract for each budget year in which this Construction Contract is in effect. The Contractor and Owner therefore agree that the Owner shall have the right to terminate this Construction Contract in whole or in part without penalty to the Owner in the event that sufficient funds to provide for loan payment(s) under this Construction Contract are not appropriated, not authorized, or not made available, or such funding has been reduced. In the event this Construction Contract is subject, in whole or in part, to the appropriation and disbursement of federal and/or state funds and those federal and/or state funds are not appropriated or are not disbursed to or on behalf of the Owner, the Contractor and the Owner hereby agree that the Owner shall have the right to terminate this Construction Contract in whole or in part without penalty to the Owner. In either such event, the Contractor shall have no recourse against the Owner

**(1) Effects of Nonappropriation.** If funds to enable continued payment under this Construction Contract are not appropriated, authorized or otherwise made available by law, the Owner shall have the right to terminate this Construction Contract without penalty to the Owner at the end of the last period for which funds have been appropriated, authorized or otherwise made available by law by giving written notice of termination to the Contractor.

**(2) Effects of Reduced Levels of Funding.** If funding is reduced by law, or funds to pay the Contractor for the agreed to level of the products, services and functions to be provided by the Contractor under this Construction Contract are not appropriated, authorized or otherwise made available by law, the Owner may, upon seven (7) business days written notice to the Contractor, reduce the level of the products, services or functions in such manner and for such periods of time as the Owner may elect. The charges payable under this Construction Contract shall be equitably adjusted to reflect such reduced level of products, services or functions and the parties shall be afforded the rights set forth in this Contract.

**(3) No Payment for Lost Profits.** In no event shall the Owner be obligated to pay or otherwise compensate the Contractor for any lost or expected future profits.

**D. Rights Upon Termination.**

**(1) Termination for Cause.** In the event the Owner terminates this Construction Contract for cause, the Contractor shall relinquish to the Owner any applicable interest, title and ownership including, but not limited to, perpetual use of any proprietary rights in and to the products and deliverables delivered to, in the possession of, and properly invoiced and paid for by the Owner (except to the extent such invoiced amount is disputed). With regard to third party products, the Contractor shall transfer all licenses which it is permitted to transfer in

accordance with the applicable third party license. The Owner shall have no financial obligation to compensate the Contractor for such terminated products unless payment is otherwise approved by the Owner prior to such termination. The Contractor shall be liable to the Owner for any and all costs incurred in terminating this Construction Contract, in whole or in part, including, but not limited to, reasonable attorney fees and all court awarded fees and costs.

**(2) Termination for Lack of Funding or Convenience.** In the event of termination by the Owner for lack of funding or convenience, the Contractor will be paid for all labor, services, equipment, materials, reports, plans, specifications, drawings, deliverables, incidentals, etc. (including any holdbacks) installed and delivered to the Owner as of the termination date and the Contractor shall relinquish to the Owner any applicable interest, title and ownership including, but not limited to perpetual use of any proprietary rights in and to said labor, services, equipment, materials, reports, plans, specifications, drawings, deliverables, incidentals, etc. delivered to, in the possession of, and paid for by the Owner (except to the extent any invoiced amount is disputed). The Contractor shall be required to exercise commercially reasonable efforts to mitigate damages.

**(3) Assumption of Subcontracts.** In the event of termination, the Owner shall have the right to assume, at the Owner's option, any and all subcontracts for products, services and functions provided exclusively under this Construction Contract.

**(4) Delivery of Documents.** In the event of termination, (i) the Contractor shall promptly deliver to the Owner, in a manner reasonably specified by the Owner, all documents and other tangible items furnished by, or owned, leased, or licensed by, the Owner relative to the Project, and (ii) the Contractor will be paid for all services performed and deliverables completed and accepted (pro-rated for deliverables partially completed) prior to the effective date of the termination (except to the extent any invoice amount is disputed).

**18. Force Majeure.** Contractor shall not be held responsible for delays nor be subject to liquidated damages when such delays are caused by conditions beyond its control, including without limitation:

- A. Acts of God, fire, explosion, epidemic, cyclone, flood, war, strikes, revolution, civil commotion, or acts of public enemies; and
- B. Change of law and order, proclamation, regulation, ordinance, or governmental requirement.

Upon cessation of work for reason of force majeure delays, Contractor shall use its best efforts to meet the schedule set forth in Section 5.

**19. Subcontracting.** The Contractor shall not, without the prior written approval of the Owner, subcontract, in whole or in part, any of the Contractor's services. Any subcontractor so approved shall be required to secure and maintain insurance coverage equal to or better than that required of the Contractor and shall name the Owner as additional insured parties and said subcontractors shall deliver to the Owner certificates of insurance evidencing such coverages. All subcontractors shall comply with all federal, state and local laws, regulations and ordinances but such requirement shall not relieve the Contractor from its requirement that all services provided hereunder shall comply with all federal, state and local laws, regulations and ordinances.

The Contractor shall be as fully responsible to the Owner for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

The Contractor is responsible for and shall control activities of its subcontractors and shall ensure that the subcontractors shall consult and cooperate with one another and other contractors working on the site. The Contractor shall further ensure that each subcontractor shall furnish all necessary information to other subcontractors and shall lay out and install its own work so as to avoid any delays or interferences with the work of another. Any cost for changes, cutting and/or repairing, made necessary by failure to observe the above requirements shall be borne by the Contractor and/or the subcontractor responsible for such failure or neglect.

The Contractor shall not, without the prior written approval of the Owner, substitute, terminate, replace or otherwise remove a subcontractor.

**20. Assignability.** The Contractor shall not assign any interest in this Construction Contract, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Owner; provided, however, that claims for money due or to become due the Contractor from the Owner under this Construction Contract may be assigned to a bank, trust, company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

**21. Audit.** The Owner reserves the right to audit the Contractor's books of account in relation to this Construction Contract any time during the period of this Construction Contract or at any time during the twelve month period immediately following the completion or termination of this Construction Contract. In the event the Owner elects to make such an audit, the Contractor shall immediately make available to the Owner all records pertaining to this Construction Contract, including, but not limited to, payroll records, bank statements and canceled checks.

**22. Intentionally Omitted.**

**23. Interest of Contractor.** The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the Project or any part thereof or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performance of this Contract, it shall not employ any person having any such interest.

**24. Entire Contract.** This Construction Contract shall constitute the complete and exclusive statement of the contract between the parties as it relates to this transaction and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter. Any amendment to this Construction Contract must be in writing and agreed to and executed by the Owner and the Contractor.

**25. Independent Contractor Relationship.** The relationship between the Owner and the Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor shall be deemed to be an employee, agent or servant of the Owner. The Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Construction Contract.

**26. Severability.** Whenever possible, each provision of this Construction Contract shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Construction Contract, however, is held to be prohibited or invalid under applicable law, such provision shall be deemed restated to reflect the original intentions of the parties, as nearly as possible in accordance with applicable law, and if capable of substantial performance, the remaining provisions of this Construction Contract shall be enforced as if this Construction Contract was entered into without an invalid provision. If the ruling and/or controlling principle of law or equity leading to the ruling is subsequently overruled, modified or amended by legislation or judicial or administrative action, then the provision(s) in question as originally set forth in this Construction Contract shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

**27. Survival.** Any provisions of this Construction Contract that impose continuing obligations on the parties shall survive the expiration or termination of this Construction Contract for any reason.

**28. Changes in the Project: Change Orders.**

**A. Requests for Change Orders.** The Owner reserves the right to request from time to time any changes to the requirements and specifications of this Construction Contract and the products to be provided and the functions and services to be performed by the Contractor under this Construction Contract. Such changes must be authorized by the Owner. The Owner shall not approve of any change orders, deletions, additions, or additional work items to the work or any change in the terms and conditions of this Construction Contract except by means of an authorized amendment hereto, or a change order issued as set forth in this Section, except in the event of an emergency endangering life or property.

**B. Procedures.**

**(1) The Contractor's Response to a Change Request.** Within fifteen (15) calendar days after receipt of a request by the Owner for any such change or such other period of time as the parties may mutually agree to in writing, the Contractor shall submit to the Owner a proposal describing any changes in products, functions, timing of delivery, assignment of personnel, and the like, and any associated price adjustment. The Contractor's proposal shall describe, in detail, the basis for the proposed price adjustment, including the charges for any products required to implement the change request.

To the extent that additional cost or cost savings result from a change in required products, the Contractor shall obtain any additional products and provide them to the Owner at a negotiated price acceptable to the Owner and the Contractor. Similarly, if the change request is expected to result in a reduction in products required to perform the services, the Contractor's charges shall be reduced by the cost savings resulting from the products eliminated by the change request.

**(2) Owner's Acceptance of Change Request.** If the Owner accepts the Contractor's proposal, the Owner shall issue a change order referencing the Contractor's proposal and all parties shall sign the change order. The Contractor shall not implement any change request until the Owner has issued a valid, properly executed, change order.

**(3) Owner's Rejection of Change Request.** If the Owner does not accept the Contractor's proposal, the Owner may within two (2) weeks of such non-acceptance: (i) withdraw the change request; or, (ii) modify the change request, in which case the procedures set forth above shall apply to the Contractor's response to the modified change request.

**C. Owner Discretion.** The Owner may, in Owner's sole discretion, approve the proposed change order and shall forward same for additional signatures under the following conditions: (i) if it conforms to provisions of applicable laws; (ii) if it is consistent with this Construction Contract; (iii) if the time of performance of this Construction Contract will not be unreasonably delayed; and (iv) if the change order requires an increase in the price of the Construction Contract, the Owner has sufficient funds therefore either from the **loan** or personal funds.

**D. Change Orders Governed by the Provisions of this Construction Contract.** All work performed under a change order is governed by the provisions of this Construction Contract.

**29. Conflicts or Disputes.** This Construction Contract represents the concurrence between the Owner and the Contractor and governs all disputes between them. In the instance of a conflict or dispute over issues not specifically referenced within the Construction Contract, the following documents shall be used as historical documents, without regard to the order of precedence, to resolve such conflicts or disputes, as follows: (i) the ITB and (ii) the Contractor's bid response to the ITB dated \_\_\_\_\_, 20\_\_\_\_. Said historical documents are attached hereto as part of **Attachment A**.

**A. Procedure.** This procedure supersedes all statements to the contrary occurring either in proposals or other prior agreements, oral or written, and all other communications among the parties relating to this subject.

**B. Presumption.** This Construction Contract or any section thereof shall not be construed against any party due to the fact that the Construction Contract or any section thereof was drafted by such party.

**30. Disputes; Legal Proceedings; Waiver of Trial by Jury and Continued Performance.** The Contractor agrees that it waives a trial by jury as to any and all claims, causes of action or disputes arising out of this Construction Contract or services to be provided pursuant to this Construction Contract. Notwithstanding any such claim, dispute or legal action, the Contractor shall continue to perform services under this Construction Contract in a timely manner, unless otherwise directed by the Owner.

**31. Intentionally Omitted.**

**32. Binding Contract.** The Owner and the Contractor each bind themselves, and their successors, assigns and legal representatives to the other party to this Construction Contract and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Construction Contract.

**33. Waiver.** Any waiver of any terms or condition of this Construction Contract by any of the parties hereto shall be in writing and shall not be construed to be a waiver of any other term or condition of this Construction Contract.

**34. Governing Laws.** This Construction Contract, its terms and conditions and any claims arising therefrom shall be governed by the laws of the State of Connecticut.

**NSP CONSTRUCTION CONTRACT (Owner Occupied)**

**Property Owner:**

**Property Address:**

**35. Notice.** Except as otherwise specifically prohibited in this Construction Contract, whenever under this Construction Contract approvals, authorizations, determinations, notices, satisfactions or waivers are required or permitted, such items shall be effective and valid only when given in writing, signed by the Owner or the Contractor, and delivered in hand or sent by mail, postage prepaid, to the party to whom it is directed, addressed until changed by written notice, as follows:

Contractor:

Owner:

**36. Intentionally Omitted.**

**37. Intentionally Omitted.**

**38. Work Beyond the Construction Contract.** The Contractor hereby understands, acknowledges and agrees that he/she/it will not undertake or perform any additional or new work for the Owner at the Project which is not part of the Project until all work under this Construction Contract is completed first.

**(Signature Page to Follow)**

NSP CONSTRUCTION CONTRACT (Owner Occupied)

Property Owner:  
Property Address:

IN WITNESS WHEREOF, the parties hereto execute this Construction Contract on the dates signed below.

WITNESS:

**[OWNER]**

\_\_\_\_\_

**[By:]** \_\_\_\_\_

**[ \_\_\_\_\_, Its \_\_\_\_\_ ]**

\_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

**[CONTRACTOR]**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Its \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A**

**BID DOCUMENTS**

- ITEM I. ITB**
- ITEM II. INSTRUCTIONS TO BIDDERS**
- ITEM III. BID FORM / PROPOSAL & SCHEDULES**
  - SCHEDULE A: Debarment Certificate**
  - SCHEDULE B: Annual Statement of Financial Interests**
  - SCHEDULE C: Disclosure and Certification Affidavit**
  - SCHEDULE D: Contractor's Certification**
  - SCHEDULE E: Contractor's Professional/Trade License**
  - SCHEDULE F: Intentionally Omitted**
  - SCHEDULE G: Intentionally Omitted**
  - SCHEDULE H: Contractor's Qualification Statement**
  - SCHEDULE I: Bid Bond (if any)**
- ITEM IV. DRAWINGS AND SPECIFICATIONS**
- ITEM V. DAVIS-BACON PREVAILING WAGE RATES**
- ITEM VI. CORPORATE RESOLUTION (if applicable)**

**NSP CONSTRUCTION CONTRACT (Owner Occupied)**  
**Property Owner:**  
**Property Address:**

**ATTACHMENT B**  
**ASSISTANCE AGREEMENT**

**NSP CONSTRUCTION CONTRACT (Owner Occupied)**  
**Property Owner:**  
**Property Address:**

**ATTACHMENT C**  
**INSURANCE CERTIFICATES**

**NSP CONSTRUCTION CONTRACT (Owner Occupied)**

**Property Owner:**

**Property Address:**

**ATTACHMENT D**

**MISCELLANEOUS**