



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
25 Capitol Street – Room 120
Concord, New Hampshire 03301

VICKI V. QUIRAM
Commissioner
(603) 271-3201

January 19, 2017

JOSEPH B. BOUCHARD
Assistant Commissioner
(603) 271-3204

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Jm

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

1) Authorize the Department of Administrative Services to enter into a contract with Merrimack County (VC# 177435) Boscawen, New Hampshire, for a total price not to exceed \$15,046,500 to acquire a new superior courthouse and land located at 163 North Main Street in Concord. This contract is effective upon Governor and Council with an anticipated completion date of no later than July 1, 2020. **100% General – Capital Funds – General Funds.**

2) Further authorize pursuant to Chapter 141:2, IV, Laws of 2016, the amount of \$200,000 be approved for payment to the Department of Administrative Services, Division of Public Works Design and Construction (VC# 177875), for two full time clerk of the works and one on call architect for oversight and engineering services provided, bringing the total to \$15,246,000. **100% Capital Funds– General Funds.**

3) Further authorize pursuant to Chapter 141:2, IV, Laws of 2016, the amount of \$25,000 be approved for payment to the original architect, SMRT, (VC 153153), Portland, ME, for their work on the project bringing the total to \$15,271,500. **100% Capital Funds– General Funds.**

4) Further authorize pursuant to RSA 19-A:9, the transfer of \$78,500 to the State Art Fund within the Department of Cultural Resources. This transfer is to purchase art for the new Merrimack Superior Court house. Appropriation Account # 010-034-11270000-054-406342.

Funding is available in account titled Administrative Services – Court Facilities as follows:

01-14-14-146530-49820000 Merrimack Superior Court	<u>SFY17-18</u>
034-500162 - Repair/Renovations Bldgs.	\$ 15,046,500
034-500162- Interagency DPW Fees	200,000
034-500152 – Design/Study Consultant	<u>25,000</u>
Total	\$ 15,271,500

EXPLANATION

Per Chapter 141:1-3, laws of 2016 this is a request to enter into an agreement with Merrimack County to acquire by deed a new superior courthouse and land located adjacent to the existing Merrimack County Superior Court at 163 North Main Street. As part of the agreement, Merrimack County will contract with a developer to construct a new courthouse of approximately 34,500 square feet with a minimum of 150 parking spaces. The new courthouse shall be constructed in accordance with current division of public works design and construction standards and the minimum standards for all courts as established by the New Hampshire court accreditation committee. The plans and specifications shall be subject to review and approval by the State Fire Marshal. Merrimack County is required to provide a property description and title history for the property to be transferred to the state within 90 days of the execution of this agreement.

Under the terms of the agreement the State shall pay Merrimack County 95% of the contract price (\$15,700,000) less \$653,500 for state "holdbacks" or \$14,261,500 upon substantial completion of the project and the remaining 5% of the purchase price or \$785,000 shall be due to the county upon final acceptance of the project by the State. The state holdbacks are as follows:

\$175,000 for two (2) full time state employed clerk of the works
\$25,000 to support an on call architect
\$25,000 to pay the original architect (SMRT) for their work on the project
\$350,000 to purchase furniture and equipment for the new courthouse
\$78,500 to purchase artwork for the courthouse
\$653,500 Holdback Total

The contract has been approved by the Attorney General as to form and execution; and the Department of Administrative Services has certified that the necessary funds are available.

Respectfully submitted,



Vicki V. Quiram,
Commissioner

**PURCHASE AND SALE AND PROJECT AGREEMENT
BETWEEN THE STATE OF NEW HAMPSHIRE AND MERRIMACK COUNTY
RELATING TO THE MERRIMACK COUNTY SUPERIOR COURT**

THIS AGREEMENT is made on the ____ day of _____, 2016 between the State of New Hampshire, acting through the Department of Administrative Services having an office at 25 Capitol Street in Concord, New Hampshire and Merrimack County having an office at 333 Daniel Webster Highway, Suite # 2, Boscawen, New Hampshire.

WHEREAS, Merrimack County is the owner of a parcel of land at 163 North Main Street in Concord, New Hampshire which contains improvements including the existing Merrimack County Superior Courthouse and Merrimack County Administration Building;

WHEREAS, Merrimack County currently leases the existing Merrimack County Superior Courthouse to the State of New Hampshire Department of Administrative Services under the terms of a written lease dated April 2, 2015;

WHEREAS, the State of New Hampshire has determined that a new Merrimack Superior Courthouse is necessary, and the General Court has appropriated funds for that purpose;

WHEREAS, the State of New Hampshire Department of Administrative Services, Division of Public Works initiated planning for the construction of a new Merrimack County Superior Courthouse on State owned land on Hazen Drive in the City of Concord;

WHEREAS, Merrimack County expressed an interest in having the new Merrimack County Superior Courthouse built on the 163 North Main Street Concord site;

WHEREAS, Merrimack County conducted planning and study on the feasibility of constructing a courthouse on a portion of the 163 North Main Street Concord site and represented that it could perform the construction at or below the estimated cost for the proposed Hazen Drive construction;

WHEREAS, the General Court of the State of New Hampshire has passed legislation appropriating funds for and otherwise authorizing, but not requiring, the State of New Hampshire to purchase a fully constructed courthouse facility located at 163 North Main Street in Concord from Merrimack County;

WHEREAS, Merrimack County has agreed to contract with a developer selected through an open request for proposals process for the construction of the proposed courthouse facility;

NOW, THEREFORE, in consideration of the foregoing promises herein set forth, the parties hereto mutually agree to the terms and conditions as set forth in this Agreement.

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CERTAIN TERMS AND DEFINITIONS

- 90% Plans and Specifications:** See Section 6, Paragraph 10 hereof.
- Administration Building:** The Merrimack County Administration Building located at 163 North Main Street in Concord, New Hampshire.
- Agreement:** This written Purchase and Sale and Project Agreement which sets forth the obligations of the parties with respect to this Project. The Agreement includes any and all amendments and the Consolidated Exhibits in Section 1, Paragraph 1.
- Building:** The new Merrimack County Superior Courthouse building to be constructed on a portion of the property located at 163 North Main Street in Concord, New Hampshire, in accordance with the terms and provisions hereof.
- Building Substantial Completion:** The point in time at which the State reasonably determines that all aspects of the Building are completed in conformity with the Final Design Plans and Specifications and all relevant laws, codes and regulations such that the NHJB, upon completing the installation of court-related furniture, fixtures and equipment and the relocation of court files and related materials, to open to the public for courthouse business in the normal course.
- Certificate of Occupancy:** A document issued by the Office of the State Fire Marshal or its authorized representative certifying that all of, or a designated portion of a building, is approved for its designated use, together with all other certificates or permits required in order for occupancy of the Building to be permitted under applicable laws and codes.
- Closing Date:** The date on which the County will transfer ownership of the State Parcel to the State by Warranty Deed. See Section 2, Paragraph 6 hereof.
- Consequential Damages:** Damages or injuries that do not flow directly and immediately from an injurious action under the Contract but that result indirectly from that action.
- Construction Contract:** The contract between the County and the Developer with respect to the construction of the Courthouse Facility and the demolition of

the Administration Building on the Land. See Section 2, Paragraph 2 hereof.

County: Merrimack County and its agents.

County Clerk of the Works: An authorized representative identified by the County responsible for observing construction on the County's behalf for conformance with the Final Design Plans and Specifications. See Section 8, Paragraph 5.

County Parcel: That portion of the Land immediately surrounding and beneath the Existing Courthouse Building to be retained by the County in accordance with the terms and conditions of this Agreement.

Court Standards: As defined in Section 1, Paragraph 1(C).

Courthouse Facility: The Building, the Parking Area, and all other portions of the Land necessary to support access and egress from the Building to the Parking Area and from the Parking Area to public ways.

Courthouse Lease: That certain lease dated April 2, 2015 by and between the County, as landlord, and the State, as Tenant, pertaining to the Existing Courthouse Building.

Day: Unless otherwise indicated, this term will mean a Calendar Day.

Developer: The Duprey Company, or its designee.

Emergency Situation: See Section 8, Paragraph 16 hereof.

Existing Courthouse Building: The Merrimack County Superior Courthouse located at 163 North Main Street in Concord, New Hampshire, which is in existence and use as of the date of the execution of this Agreement.

Final Completion: See Section 10, Paragraph 5 hereof.

Final Design Plans and Specifications: See Section 6, Paragraph 10 hereof.

Interim Occupancy Agreement: See Section 2, Paragraph 7 hereof.

Land: All of the land owned by Merrimack County at the 163 North Main Street location bordered on the east by North Main Street, the north

by Court Street, the west by Montgomery Street and partially bordered on the south by Pitman Street, as more particularly described in Exhibit A attached hereto and made a part hereof. See Section 2, Paragraph 1.

- NHDAS:** The New Hampshire Department of Administrative Services.
- NHJB:** The New Hampshire Judicial Branch.
- Parking Area:** Not less than 150 designated parking spaces for permanent, post-construction State use located on the Land.
- Plans:** The graphic and pictorial documents which show the location, character, dimensions, and details of the prescribed work.
- Probate Court Lease:** That certain lease dated April 2, 2015 by and between the County, as landlord, and the State, as tenant, pertaining to a portion of the Administration Building.
- Project:** The design and construction of the Courthouse Facility, the demolition of the Administration Building on the Land and the renovation of the Existing Courthouse Building, such that it may be occupied by the County.
- Project Substantial Completion:** The point in time at which the State reasonably determines that all aspects of the Project are completed in conformity with the Final Design Plans and Specifications and all relevant laws, codes and regulations, such that (i) the NHJB may operate the courthouse business without material interference from construction activities related to the Project, (ii) that the only remaining construction work on the Courthouse Facility is related to a Punch List item, and (iii) as to the Existing Courthouse, that all major exterior work on the Existing Courthouse has been completed such that the work remaining to be completed is not reasonably anticipated to materially interfere with NHJB's use and operation of the Courthouse Facility.
- Punch List:** A written document listing items to be completed or corrected.
- Purchase Price:** Fifteen Million Seven Hundred Thousand and 00/100 (\$15,700,000.00).
- Reciprocal Easements:** As defined in Section 2, Paragraph 20.
- Sample Specs:** As defined in Section 1, Paragraph 1(C).

- SMRT Study:** As defined in Section 1, Paragraph 1(C).
- Specifications:** Document that consists of general conditions and written requirements for material, equipment, construction systems, standards and workmanship, and other documents or reports as applicable.
- State:** The State of New Hampshire, acting through any of its branches or agencies.
- State Clerk of the Works:** An authorized representative identified by NHDAS responsible for observing construction on the State's behalf for conformance with the Final Design Plans and Specifications. See Section 8, Paragraph 5.
- State Engineer:** See Section 8, Paragraph 5 hereof.
- State Parcel:** The Land, less the County Parcel, subject to the terms and conditions set forth herein, together with all rights, privileges and easements appurtenant thereto.
- Warranty Repair List:** See Section 10, Paragraph 6 hereof.

SECTION 1 - GENERAL PROVISIONS

1. Incorporation of Documents. This Agreement consists of the following, which are incorporated by reference and which together with any and all amendments hereto, is sometimes hereafter referred to as the “Agreement”:

A. This Purchase and Sale and Project Agreement; and

B. The Consolidated Exhibits, which are referenced or attached as noted:

Exhibit A	Legal Description of the Land
Exhibit B	Plan of the Land
Exhibit C	Temporary Parking Plan

C. The following documents and materials are incorporated herein by reference, and the parties acknowledge receipt of true and complete copies of the same:

- i. That certain design and space planning study prepared by SMRT, Inc., titled “Merrimack County Courthouse Design and Space Planning,” dated May 29, 2014, together with the space calculations in the floor plans accompanying such study (the “**SMRT Study**”);
- ii. The Minimum Standards for All Courts adopted by the New Hampshire Court Accreditation Commission on November 5, 2007 (the “**Court Standards**”); and
- iii. The New Hampshire Division of Public Works high performance design and construction standards, as evidenced in the DPW specification for the Merrimack Circuit Court in Merrimack, New Hampshire and the Hillsborough North Superior Court (the “**Sample Specs**”).

2. Effective Date. This Agreement and all obligations of the parties hereunder shall become effective on the date the Governor and Executive Council of the State of New Hampshire approves this Agreement. If the County or its Developer and contractors commence work prior to the Effective Date, such work shall be performed at the sole risk of the County, Developer and contractors.

3. Conditional Nature of Agreement. This Agreement is contingent on the availability and continued appropriation of funds, which the State hereby represents as having been fully appropriated in the amount of \$15,700,000, and in no event shall the State be liable for

any payments in excess of such appropriated funds. In the event of a reduction or termination of appropriated funds, NHDAS shall have the right to delay the purchase of the State Parcel until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the County notice of such termination for non-appropriation. The State shall not be required to transfer funds from other accounts to fund this Agreement.

4. Project Team. The Parties agree that the Project will require the coordinated efforts of the State, the County and its Developer. The County's designated Project Manager is:

Name	Stephen Marro, or his designee
Title	County Administrator, Merrimack County
Address	333 Daniel Webster Highway, Suite 2, Boscawen, NH 03303
Phone	603-796-6800
E-mail	smarro@merrimackcounty.net

Upon execution of contracts with a Developer, the County will have that entity designate an individual as its Project Manager and inform NHDAS of that designation. NHDAS shall have the right to review and approve the Developer project manager, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary set forth herein, NHDAS hereby consents to the appointment of either Stephen Duprey or Jonathan Chorlian as the Project Manager for the Developer.

NHDAS shall assign a Project Manager who shall function as the State's primary representative with regard to contract administration. The NHDAS Project Manager is:

Name	Stephen Lorentzen
Title	Administrator, Division of Plant and Property
Agency	New Hampshire Dept. of Administrative Services
Address	25 Capitol Street, Concord, NH 03301
Phone	603-271-6864
E-mail	Stephen.Lorentzen@nh.gov

Certain portions of this Agreement require coordination with and approval by the New Hampshire Judicial Branch. In most instances, the communication with NHJB shall be through the NHDAS Project Manager. In the event that direct coordination is necessary, NHJB shall assign a Project Lead who shall function as NHJB's primary point of contact for the Project. The NHJB Project Lead is:

Name	Hon. Tina Nadeau
Title	Chief Justice of the Superior Court

Agency New Hampshire Judicial Branch
 Address 45 Chennell Drive, Suite 1, Concord, NH 03301
 Phone (603) 271-6418

5. Personnel. Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the transfer of the State Parcel, the County shall not hire, and shall not permit its Developer or any of its contractors, subcontractors or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to employ any State employee or official who is materially involved in the administration or performance of this Agreement. This provision shall survive termination of this Agreement.

6. Dispute Resolution. In the event of any dispute governing the interpretation of or performance of any party under the Agreement, including an Event of Default, the provisions of this section shall govern. Prior to the filing of any formal proceedings with respect to a dispute, the party believing itself aggrieved (the “Invoking Party”) shall call for progressive management involvement in the dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party’s right to any other remedy permitted by this Agreement, at law or in equity.

The parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

Dispute Resolution Responsibility and Schedule Table

Level	The County	The State	Cumulative Allotted Time
Primary	Bob Maccini	Stephen Lorentzen	5 business days
Secondary	Sid McDonald	Michael Connor	10 business days
Tertiary	Stephen Marro	Vicki Quiram	15 business days

The allotted time for the first level negotiations shall begin on the date the Invoking Party’s notice is delivered to the other party. Subsequent allotted time is days from the date that the original Invoking Party’s notice is delivered to the other party. If a dispute remains unresolved following the expiration of the maximum Cumulative Allotted Time, either party may file litigation to resolve the dispute.

7. Notices. All notices under this Agreement shall be served or given only by registered or certified mail, except in cases of emergency, in which case, they shall be confirmed by registered or certified mail, and, if intended for the State shall be addressed to its address

stated below, or to such other address as may be designated by the State by written notice to the County:

State of New Hampshire: New Hampshire Dept. of Administrative Services
25 Capitol Street, Room 120
Concord, NH 03301

With Copies To:

Hon. Tina Nadeau
Chief Justice of the Superior Court
New Hampshire Judicial Branch
45 Chennell Drive, Suite 1, Concord, NH 03301

Merrimack County: Stephen Marro
County of Merrimack
333 Daniel Webster Highway, Suite 2
Boscawen, NH 03303-2415

With copies to:

Richard Y. Uchida, Esq.
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, NH 03301-4846

and

Ari B. Pollack, Esq.
Gallagher, Callahan & Gartrell, PC
214 N. Main Street
P.O. Box 1415
Concord, NH 03302-1415

8. Partial Invalidity. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

9. Headings. The headings throughout this Agreement are for reference

purposes only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

10. Entire Agreement. This document constitutes the entire agreement and understanding between the parties, and supersedes all prior contracts and understandings, whether oral or written, pertaining to the Project.

11. Confidentiality of Information. The State anticipates that the County and its Developer and contractors will obtain confidential and sensitive information regarding the operation of the court system as part of this Agreement. All documents, studies, files, surveys, maps, memoranda, recordings, pictures, computer programs or printouts, notes, letters or any other document or data in any form provided by the State to the County or its contractors shall remain the property of the State and shall not be disclosed to third-parties without the permission of the State, which permission shall not be unreasonably withheld, conditioned or delayed.

The State and the County understand that confidentiality of any data related to this Agreement is subject to the provisions of New Hampshire RSA 91-A and all other applicable laws, rules and regulations. If either party is served with a demand under New Hampshire RSA 91-A, it will make best efforts to promptly notify the other party of such demand, and such other party shall have the right to intervene in such action.

12. Venue and Jurisdiction. Any action on this Agreement may only be brought in the State of New Hampshire in accordance with the dispute resolution procedures of this Agreement set forth herein. The Parties agree to venue in Rockingham County Superior Court. This Agreement is to be construed according to the Laws of the State of New Hampshire.

13. Relationship to the State. Neither the County nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

14. Limitation of Consequential Damages. Except to the extent covered by Section 4, Paragraph 8 and the Liquidated Damages Provisions of Section 5, Paragraph 4, each party's recovery for Consequential Damages arising from or related to the actions of the other party under this Agreement shall be limited in all other instances to \$250,000.

SECTION 2 - TRANSFER OF OWNERSHIP

1. Ownership of the Land. The County is the fee owner of the Land, which is more particularly described in Exhibit A attached hereto.
2. Agreement to Construct the Improvements. Subject to the terms, conditions and covenants contained in this Agreement, the County shall contract with the Developer for the construction of the Courthouse Facility on the State Parcel.
3. Agreement to Sell. The County agrees to sell, transfer and convey to the State, and the State agrees to acquire and purchase from the County, by warranty deed, fee simple title to the State Parcel, upon and subject to the terms, conditions and covenants contained in this Agreement.
4. Subsequent Sale of the County Parcel. The County shall except and reserve the County Parcel from the transaction contemplated herein. If, after the Closing Date, the County desires to sell the County Parcel, it shall provide written notice (the “**County’s Sale Notice**”) to the State of its intent to do so. The State shall have a period of one hundred eighty (180) days immediately following the date of the County’s Sale Notice in which to submit to the County an offer to purchase the County Parcel (the “**State’s Purchase Offer**”), which offer shall specify a proposed purchase price equal to the fair market value of the County Parcel, including all improvements located thereon, as determined by a New Hampshire licensed real estate appraiser. If the parties are unable to agree upon a purchase price within thirty (30) days immediately following the County’s receipt of the State’s Purchase Offer, or if the State fails to timely submit the State’s Purchase Offer, then the State’s rights pursuant to this Section 2, Paragraph 4 shall be of no further force or effect, and the State shall promptly provide the County with a recordable instrument evidencing the termination of such rights. To the extent permitted under applicable law, including, without limitation, New Hampshire RSA 4:40, in the event the State shall become the owner of either or both of the State Parcel and the County Parcel, and shall subsequently desire to sell one or both of the same, it shall first offer the such parcel to the County, and the County shall have the same right to offer to purchase such parcel, including all applicable timelines, to which the State is entitled, above.
5. Ownership of Parking. The County agrees that all parking established on the Land, including spaces in excess of the mandated 150, will be transferred in fee to the State as part of this transaction. The State agrees that it will negotiate an agreement in good faith for the County’s exclusive use of all parking spaces in excess of 150 on the State Parcel for so long as the County retains ownership of the County Parcel.
6. Time of Transfer. For purposes hereof, the “**Closing Date**” for this sale shall be the date which is at least 10 days, but no more than 60 days, after Project Substantial Completion, including final improvements to all parking and site improvements associated with the Courthouse Facility.

7. Building Substantial Completion. The Building Substantial Completion may permit the NHJB to take occupancy of the Building as set forth in Section 10; however, Building Substantial Completion alone shall not be a basis for triggering the sale of the State Parcel from the County to the State. Within sixty (60) days following the date the Final Design Plans and Specifications are issued, the parties shall agree upon a form of occupancy agreement which will govern any interim period between the State's occupancy of the Building and Closing Date (the "**Interim Occupancy Agreement**"). Should NHDAS and County be unable to reach agreement on a form of Interim Occupancy Agreement by the date of Building Substantial Completion, then the terms of Courthouse Lease shall govern this period of occupancy, if any, and the State shall continue to pay rent to the County at the same per annum amount of \$287,364.00 established in the Courthouse Lease for the Existing Courthouse Building, regardless of the additional square footage provided in the Building (for avoidance of doubt, the rental payments referenced in this Section 2, Paragraph 7 shall be separate and apart from the Purchase Price set forth in Section 3 of this Agreement). Such occupancy agreement shall provide that no rent shall be payable to the County for any period of occupancy after April 1, 2021.

8. Eminent Domain. If any proceeding shall be commenced for the taking of all or any material part of the State Parcel for public or quasi-public use pursuant to the power of eminent domain, condemnation or otherwise, before the Closing Date, then State shall have the option to terminate this Agreement by giving written notice thereof to the County

9. Title and Survey. Within ninety (90) days following the Effective Date of this Agreement, the County shall furnish the following items to the State, at the County's sole cost and expense:

- (a) A standard form ALTA Owner's Title Policy Commitment covering the Land, issued by a title insurance company licensed do to business in the State of New Hampshire, together with copies of all exception documents listed therein;
- (b) An ALTA survey of the Land; and
- (c) Preliminary legal descriptions of the State Parcel and the County Parcel.

10. Failure to Comply. Failure of the County to provide the documentation requested under Paragraph 9 within 10 days after notice from the State that the same is overdue will be considered a material breach of this Agreement and notwithstanding any other terms of this Agreement, NHDAS shall have the right to terminate this Agreement without any penalty upon written notice to the County of this breach.

11. Subdivisions. Any subdivision of the property owned by the County of which the Land is a part shall be completed by the County at the County's sole cost and expense prior to the Closing Date. To the extent the Land is subdivided, the County will provide an updated Title Policy within 90 days of the recording of the subdivision plan.

12. Hazardous Materials. Prior to the Closing Date, the County shall cause any and all hazardous materials discovered on the Land and/or improvements during the Project be remediated, at the County's sole cost and expense, to the reasonable satisfaction of NHDAS and in any event to the extent required by applicable laws.

13. Warranties and Representations. To induce the State to enter into this Agreement and to purchase the State Parcel, the County hereby warrants and represents to the State as follows:

(a) The County has no knowledge of any adverse rights to the State Parcel; with the exception of the Courthouse Lease and the Probate Court Lease, there are no leases, subleases, licenses, known prescriptive rights, tenancies or other agreements which grant any possessory or other interest in the State Parcel; there are no known contracts affecting the State Parcel which will survive the Closing Date; and the County has no knowledge of any default with respect to any permit, approval, ordinance, law or obligation pertaining to the State Parcel.

(b) The County has the requisite power and authority to enter into and perform its obligations under this Agreement

(c) There are no known actions (legal or administrative), suits or other proceedings with respect to the State Parcel pending for which legal process has been served on the County or threatened against the County.

14. Taxes/Prorations. Real estate taxes, special assessment, betterment assessments, utilities, water rates and sewer charges and rents, if any, shall be prorated and adjusted as of the Closing Date. Taxes due and payable for all prior years, if any, shall be paid, by the County, on or before the Closing Date. If the Closing Date shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, with the proration to be adjusted between the parties based on actual taxes (including any state ad valorem taxes) for the year in which the Closing Date occurs at the time after the Closing Date that such actual taxes are determined. It is not anticipated that there will be any such taxes, assessments, or charges outstanding on the Closing Date.

15. Exemption from Transfer Tax. It is understood that the State and the County are exempt from the transfer tax related to the sale of the State Parcel. To the extent required by law, both parties agree to execute any tax returns, inventories, conveyance forms or questionnaires required to be filed in connection with any such taxes.

16. No Brokers. Each party hereby represents to the other that it has dealt with no broker, agent or representative in connection with this transaction.

17. Conditions to Purchase. The obligation of the State to purchase the State Parcel under this Agreement is expressly conditional and contingent upon all of the following:

- (a) A determination of Project Substantial Completion as set forth in Section 10 hereof;
- (b) The Courthouse Facility is completed in conformance with the Final Design Plans and Specifications so as to allow Merrimack County Superior Court to operate in the Building in the normal course;
- (c) Receipt of title to and possession of the State Parcel on the Closing Date;
- (d) All of the County's warranties and representations set forth in Paragraph 13 hereof being true as of the Closing Date;
- (e) An approved continuity of operations plan for any additional or future work anticipated to be performed as part of the Project on or adjacent to the State Parcel by the County or its Developer or by and on behalf of any subsequent owner of the County parcel, the parties acknowledging that such continuity of operations plan shall be amended and modified from time to time depending on the specific nature of such additional or future work;
- (f) No eminent domain proceeding being pending against the State Parcel or any portion thereof;
- (g) There being no material adverse change in the condition of the State Parcel from its condition as of the date hereof other than resulting from usual wear and tear and construction of the Courthouse Facility as contemplated by this Agreement;

18. Conditions to Sale. The obligation of the County to sell the State Parcel under this Agreement is expressly conditional and contingent upon all of the following:

- (a) The County's receipt of the compensation as set forth in Section 3 on the Closing Date; and
- (b) The County's reservation of the County Parcel.

19. Closing Costs Borne by the County. Notwithstanding anything to the contrary contained herein, any reasonable, out-of-pocket closing costs actually incurred by the State in connection with the transaction contemplated herein shall be paid by the County.

20. Closing Documentation. On the Closing Date, the County shall execute, acknowledge and deliver, or cause to be delivered, all documents required to effectuate the transaction contemplated by this Agreement including, without limitation, the following:

- (a) Warranty Deed of the State Parcel in proper form reasonably acceptable to State's counsel duly executed, conveying title to the State Parcel in fee simple absolute to the State and establishing such mutually agreeable reciprocal easements with the State as may be reasonably necessary to ensure the functionality of the Existing Courthouse Building and the Courthouse Facility from and after the Closing Date, including easements providing for vehicular and pedestrian access, the installation, maintenance and repair of utility lines, the

performance of certain landscaping activities, the establishment of loading and dumpster areas, drainage and the construction of one or more slopes (collectively, the “Reciprocal Easements”). The parties agree that the language and location of the Reciprocal Easements shall be approved by the State as part of the Final Design Plans and Specifications.

(b) Evidence satisfactory to State that the conveyance is properly authorized and that the County is authorized to consummate the transfer of the State Parcel to the State.

(c) Completed and executed conveyance tax forms, if necessary;

(d) An executed Continuity of Operations Plan as set forth in paragraph 17(e) of this section.

21. Survival of Terms. Section 2 and Section 3 of this Agreement (with the exception of Paragraphs 4 and 5 of Section 2) shall only remain in effect through the Closing Date. The remainder of this Agreement and the obligations hereunder will remain in effect after the Closing Date, as described herein.

22. Simultaneous Closings. The parties acknowledge that the County may elect to conduct simultaneous closings with the State and the Developer. In the event the County makes such an election, which shall be in the sole discretion of the County, the State shall cooperate with the County in the coordination of simultaneous closings, however, the State shall in all instances make payment directly to the County.

SECTION 3 - COMPENSATION

1. Purchase Price. The Purchase Price for the State Parcel shall be Fifteen Million Seven Hundred Thousand Dollars (\$15,700,000), to be paid by the State as follows:

(a) The sum of Fourteen Million Nine Hundred Fifteen Thousand Dollars (\$14,915,000), less the Hold-Back Amounts (as hereinafter defined) of up to Six Hundred and Fifty Three Thousand Five Hundred Dollars (\$653,500) (as described in Paragraph 2) for a total payment of Fourteen Million Two Hundred and Sixty One Thousand Five Hundred Dollars (\$14,261,500) on the Closing Date to an account to be established by the County with the Lender (as defined in Section 8, Paragraph 20 of this Agreement); and

(b) The balance of the Purchase Price of Seven Hundred and Eighty Five Thousand Dollars (\$785,000) shall be paid by the State into an escrow account established by the County at the time of Closing. The funds in the escrow account shall be released to the County upon Final Completion as defined in Section 10 hereof. The County shall bear the costs associated with this escrow account. NHDAS may waive the escrow requirement in this section and pay these funds directly to the County if Final Completion has been achieved as of the Closing Date.

2. State Hold Backs From Purchase Price. Notwithstanding anything to the contrary set forth herein, including, without limitation, Paragraph 1 above, the parties hereby acknowledge that the State shall be entitled to withhold the following amounts from the Purchase Price (collectively, the “**Hold-Back Amounts**”):

(a) The sum of One Hundred Seventy-Five Thousand Dollars (\$175,000) to support two (2) full-time State-employed clerks of the works for the Project;

(b) The sum of Twenty-Five Thousand Dollars (\$25,000) to support a State-employed on-call architect for the Project;

(c) The sum of Twenty-Five Thousand Dollars (\$25,000) to compensate the architectural firm of SMRT, Inc. for its work on the Project;

(d) The sum of Three Hundred Fifty Thousand Dollars (\$350,000) to be used to purchase furniture and equipment to be used by the State in the Building; and

(e) The sum of Seventy-Eight Thousand Five Hundred Dollars (\$78,500) (representing one-half of one percent of the Purchase Price) to purchase artwork for the Building.

3. Coordination of Responsibilities. NHDAS shall be responsible for the selection, provision, payment and installation of the items identified in Paragraph 2, above. The County,

through the Developer and its contractors shall cooperate reasonably with NHDAS and NHJB in connection with the installation of furniture, equipment and artwork to be purchased by the State and installed in the Courthouse Facility pursuant to Paragraph 2 hereof.

SECTION 4 - CONTINUITY OF COURT OPERATIONS

1. Overview. The State requires that the construction of the Project not interfere with the regular operation of the Merrimack Superior Court. As described more fully below, the County shall be responsible for ensuring that disruptions from this Project are adequately managed to enable the court to continue its normal operations.

2. Non- Interference with Court Activity. During the course of all work on the Project the County guarantees that the all such work will not interfere with the normal operation of the Merrimack County Superior Court.

3. Preliminary and Regular Meetings. Within ninety (90) days of the County's execution of a contract with the Developer related to the Project, the County and its Developer and/or contractors will have a preliminary meeting with officials from NHJB and NHDAS to discuss the Developer's plan for the execution of the Project and the continuity of normal court operations throughout the phases of the Project. This requirement may be waived by the parties if the meeting takes place before final execution of this Agreement. Once construction activities on the Land have commenced, the Developer, the County Clerk of the Works, the State Clerk of the Works, the State Engineer, NHDAS and NHJB shall meet regularly as more particularly provided in Section 8, Paragraph 4 hereof.

4. Approval of Continuity of Operations Plan. Following the State's approval of Plans and Specifications at 65% completion but prior to submission to the State of the 90% Plans and Specifications (as defined in Section 6 hereof), the County, through the Developer, must submit a detailed written Continuity of Operations Plan for the review and approval of the NHJB and NHDAS. This plan must relate to all phases of the Project. No construction may take place until the State has approved the Continuity of Operations Plan, which approval shall not be unreasonably withheld, conditioned or delayed. The failure of the parties, despite diligent efforts, to agree on a Continuity of Operations Plan within ninety (90) days of submission by the County shall be grounds for NHDAS to terminate this Agreement without penalty pursuant to Section 7. The approved Continuity of Operations Plan shall incorporate all of the terms and conditions of this Agreement and shall be considered an integrated portion of this Agreement. The County's failure to comply with the Continuity of Operations Plan shall be grounds for termination for cause pursuant to Section 11, provided such failure shall have continued beyond the notice and cure period set forth in Section 11.

5. Content of Plan. The Continuity of Operations Plan shall specifically address all of the areas specified below and shall meet or exceed the listed requirements, standards and expectations:

A. Access/Parking

- i. The travel lanes within Pitman Street will remain passable by motor vehicles and pedestrians at all times during the course of the Project, including the segments of Pitman Street which run in front of the existing courthouse entrance, and shall not be materially obstructed by materials, vehicles or equipment, except for vehicles parking on the northerly side of Pitman Street in the normal course;
- ii. The County will implement a temporary parking schematic plan in conformance with Exhibit F. Any material deviations from the plan specified in Exhibit F will need to be reviewed and approved by the Chief Justice of the Superior Court or her designee and the designated Project Manager for NHDAS, such approval not to be unreasonably withheld, conditioned or delayed. The temporary parking plan and any amendments thereto shall provide the following:
 - a. The County will ensure that one hundred (100) parking spots are available for the exclusive use of the courthouse during the course of the Project in close proximity to the Court; and that those spaces must be clearly marked as courthouse parking during the normal hours of courthouse operations and enforced by County and/or City of Concord officials.
 - b. As part of the 100 designated parking places, a designated area shall be established for Superior Court employee, juror and judicial parking in a secure location upon the Land and adjacent to the Existing Courthouse Building;
 - c. The County shall re-designate an appropriate number of handicap accessible parking places upon the Land or in close proximity to the Court and install any ramps necessary;
- iii. The County shall provide a Winter Maintenance Plan which details procedures for the early and comprehensive snow removal/ice treatment of all walkways and parking areas to accommodate the court's customary and traditional hours of operation;
- iv. The County will not perform work that will materially interfere with access to the Courthouse on high traffic days, such as jury selection days or during high profile trials or hearings, and NHJB shall promptly advise the County of all such anticipated high traffic days and shall keep the County informed as to any modifications in the schedule for such high traffic days. In any event, NHJB shall use best efforts to provide the County with at least five (5) business days' prior notice of anticipated high traffic days;

- v. The County must submit a detailed traffic plan for vehicles and pedestrians;
- vi. The County will set-up the jobsite in a manner that temporary parking, once established, will remain as consistent as possible for the entire duration of the Project;
- vii. The County will provide clear, visible signage directing vehicles to courthouse parking, to handicapped parking and from the parking areas to the courthouse entrance. All signage shall comply with the latest version of the Manual on Uniform Traffic Control Devices, as appropriate;

B. Courthouse Conditions

- i. Noise and/or vibrations that interfere with court proceedings or the integrity or quality of the court record will require cessation of work;
- ii. Noise levels from noise generated outside the Existing Courthouse Building shall be less than 60 decibels inside the courtroom areas of the Existing Courthouse Building during normal hours of operation;
- iii. The County will provide adequate ventilation throughout the Existing Courthouse Building. Windows will not be sealed and if required for ventilation, may be opened;
- iv. CO2 levels throughout the Existing Courthouse Building should be less than 800 parts per million;
- v. The County shall provide additional cleaning services inside the Existing Courthouse Building if dust or other construction debris requires it.
- vi. To the extent the construction causes or exacerbates any structural deficiencies, building envelope issues or mechanical issues at the Existing Courthouse Building, the County shall immediately attend to and stabilize any such issues in such a manner as to ensure that safe and comfortable courthouse operations may continue.

6. Existing Leases. All covenants in the Courthouse Lease and the Probate Court Lease will remain in effect through their respective scheduled expiration dates of June 30, 2017. The County agrees that the State may extend the Courthouse Lease at identical terms until the Building Substantial Completion Date, subject to the provisions of Paragraph 7 of Section 2 of this Agreement. However, the parties acknowledge that the State shall have no right to extend the Probate Court beyond its scheduled expiration date.

7. Stop-Work Orders. Notwithstanding anything in the Continuity of Operations Plan or any other provision in this Agreement to the contrary, the Clerk of the Merrimack Superior Court or her designee, with the prior approval of the Chief Justice of the Superior Court or her designee, shall have the authority to order a stop to any and all construction activities on the Land that, in the opinion of the Clerk and Chief Justice, interfere with the regular operation of the court. The Clerk shall not be required to demonstrate a breach of the Continuity of Operations Plan to exercise this authority. The Clerk will not exercise this authority in a manner that is arbitrary or capricious. The County shall be solely responsible for any costs and delays associated with stop work orders issued pursuant to this section.

8. Future Work. After completion of this Project, each party agrees that it will notify the other party of any future work on the County Parcel or the State Parcel, as applicable, that may reasonably be anticipated to interfere with such party's use and operation of its property, and it will attempt in good faith to negotiate a reasonable continuity of operations plan with the other party prior to undertaking any such work. In no event shall either party have the right to approve future work unrelated to the Project which is performed or proposed to be performed by the other party on the property belonging to such other party.

SECTION 5 - INSURANCE REQUIREMENTS

1. Indemnity. To the fullest extent permitted by law, the County covenants and agrees to defend, indemnify and save harmless the State, its officers, employees and agents, from any and all claims, demands, suits, actions, judgments, recoveries and expenses, including but not limited to the reasonable fees and expenses of attorneys, against or incurred by the State, its officers, employees and agents, for or on account of, based on, resulting from or arising out of (or which may be claimed to arise out of) the acts or omissions of the County and its officials, employees, agents and contractors in performing any work of any nature on the Project. Nothing contained in this section or elsewhere in this Agreement shall be deemed to constitute a waiver of the defenses and sovereign immunity of the State, which immunity is hereby reserved to the State.

In addition, the County releases the State's individual officers, employees and agents from any and all claims of the County arising out of the Project, except that this provision shall not extend to claims arising from the sole direct negligence or willful misconduct of any such officers, employees and agents.

This section shall survive termination or conclusion of this Agreement.

2. Insurance. During the construction of the Project, including all warranty periods, the County, its Developer, and all subcontractors, to the extent specified below, shall provide the following insurance. All policies shall be primary insurance and per project aggregate endorsement shall apply:

- A. Workers' Compensation Insurance with Statutory Limits of the applicable Worker's Compensation law, and Employer's Liability with minimum limits of \$500,000 for each accident, \$500,000 for Bodily Injury by disease each employee, and \$500,000 policy limit for Bodily Injury by disease policy limit. If any entity required to carry this insurance is a qualified worker's compensation self-insurer, then (i) prior to its commencement of the construction that entity shall certify to the State that it is in compliance with, or exempt from the requirements of N.H. RSA 281-A, and (ii) the entity waives any right of recovery it may have or acquire against the State by reason of the Developer having paid worker's compensation benefits as a self-insurer. This insurance shall be carried by the County, the Developer and all subcontractors.
- B. Commercial General Liability Insurance, covering all operations of the Project, written on an occurrence basis, with the following minimum limits: \$1,000,000 each occurrence \$2,000,000 general aggregate (which limit shall apply separately to the construction project); and \$2,000,000 products and completed operations aggregate. Coverage shall include (by the terms of the policy or by appropriate endorsements) premises and operations (including coverage for explosion, collapse and underground

hazards), products and completed operations, contractual liability coverage, (with no exclusions for third party action over related suits), broad form property damage liability (including completed operations of subcontractors), and personal and advertising injury liability coverage. The State shall be included as additional insured, and the policy shall include an endorsement that waives the insurer's rights of subrogation against the State. This insurance shall be carried by the County and its Developer and all subcontractors.

- C. Business Automobile Liability Insurance, covering all vehicles, whether owned, non-owned, hired, or borrowed, used for any operations both on and off the Project, with a minimum limit of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage. The State shall be included as additional insured. This insurance shall be carried by the Developer and all subcontractors.
- D. Intentionally deleted.
- E. Pollution Liability Insurance, covering third-party injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from the operations and completed operations of the County or its Developer, with coverage limits of not less than \$5,000,000 per occurrence. The State shall be included as additional insured. This insurance shall be carried by the Developer.
- F. Professional Liability Insurance covering professional design services to be performed by consultants, designers, architects or engineers by or on behalf of the County and/or its Developer, with limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. This insurance shall be carried by the Developer and its design subcontractors.
- G. Commercial property or builders' risk insurance on an "all risk" or equivalent policy for, including, without limitation, insurance against the perils of fire (with extended coverage), theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, and debris removal. Such insurance shall (i) cover all equipment, machinery, supplies and other property intended to be permanently incorporated into the Project, (ii) apply to such property while it is located at the Premises or located at temporary off-site or staging areas, or while in transit to the Premises, and (iii) have limits not less than 100% of the replacement value of the improvements. The policy will include an endorsement that waives the insurer's rights of subrogation against the State. Business income coverage shall include, but is not limited to, loss of lease payments, rental income, and other types of income that may be applicable. This insurance must be carried by the Developer. Notwithstanding anything to the

contrary in this Agreement, this insurance need only be carried from the start of construction through the Building Substantial Completion date.

3. Bonds. The County or the Developer, as applicable, shall ensure that a Payment Bond is in place on the Project in the full amount of the County's contract price with the Developer.

4. Liquidated Damages. In the event that the State terminates this Agreement for cause pursuant to any of the reasons set forth in Section 11 and elects the remedy set forth in Section 11, Paragraph 2A hereof, NHDAS shall be entitled to Liquidated Damages in the following amount:

Date of Termination	Amount of Liquidated Damages
April 1, 2017- March 31, 2018	\$750,000
April 1, 2018 – March 31, 2019	\$1,500,000
April 1, 2019 – March 31, 2020	\$2,400,000
April 1, 2020 – March 31, 2021	\$3,300,000
After April 1, 2021	\$4,200,000

This Liquidated Damages provision is intended to compensate for the potential delay and subsequent increase in costs if the State is required to construct a courthouse after a default by the County. This provision shall not be applicable if the State terminates this Agreement for cause pursuant to any of the reasons set forth in Section 11 hereof and elects a remedy under Section 11 Paragraph 2B or 2C. This provision is not intended to be a penalty to the County.

5. Renewal Certificates. The County and/or its Developer shall furnish to NHDAS certificates of insurance for all renewals of the insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies.

6. Form of Policies and Certificates. The insurance policies required hereunder shall be the standard policy forms and endorsements approved for use in the State of New Hampshire by the New Hampshire Department of Insurance. The County and/or its Developer shall furnish to NHDAS the certificates of insurance for all insurance required under this Agreement. All policies of insurance shall be endorsed to provide that the insurance company shall endeavor to provide written notice to NHDAS at least thirty (30) days prior to the effective date of any cancellation or adverse material change of such policies (ten (10) days in the event of non-payment). The certificates of insurance and any renewals thereof shall be attached to the Contract and are incorporated therein by reference.

The insurance certificate should list the Certificate Holder in the lower left hand block as:

State of New Hampshire
Department of Administrative Services
25 Capitol Street, Room 120
Concord, NH 03031

7. Deductibles or Self Insured Retentions. All deductibles and self-insured retentions are the sole responsibility of the County or its Developer. Deductibles or Self-Insured Retentions must be shown on the Certificate of Insurance. No retention (deductible) shall be more than \$75,000.

SECTION 6 - DESIGN REVIEW

1. Overview. The County shall be responsible for the development and design of the Project with the review, consultation and approval of NHDAS and NHJB. Any documents submitted to the State for review as part of the Project shall become property of the State.

2. Pre-Design Meetings. Prior to the start of design work on the Project and throughout the course of design work, the County, its Developer, and their respective contractors/consultants shall meet with NHDAS and NHJB to discuss and incorporate the priorities of the State into the program and schematic design. The State anticipates that these will be approximately weekly meetings over the first six (6) to eight (8) weeks of the Project. Based on the initial meetings, the County will develop a Program and Schematic Design for the review and approval of NHDAS and NHJB prior to the development of the 35% design plans.

3. Design Standards. NHDAS is committed to excellence in the design and the development of buildings to be used for State services. The Courthouse Facility shall, at a minimum, satisfy the SMRT Study. The SMRT Study shall be relied on for space calculations and shall not be relied on as a presumptive layout of the floor plan for the Building. The layout and design will need to meet the circulation requirements of the NHJB, which are not fully addressed in the SMRT Study. The Project shall also comply with the Court Standards and the Sample Specs

4. Conflict Among the Design Standards. NHDAS has provided the SMRT Study, the Court Standards and the Sample Specs to assist the County and its Developer with standards and guidelines for the design development of the Courthouse Facility. The State does not warrant that these documents are complete or consistent for the purpose of drafting plans and specifications for the Courthouse Facility. Nothing in these documents should be construed to relieve the County and its Developer and designers from their responsibilities in developing the plans and specifications for the Project. NHDAS advises the County and its Developer that it should bring any questions regarding ambiguities or inconsistencies relating to these guideline documents to the attention of NHDAS and NHJB early in the design process so that the State may address these issues.

5. Sustainability and Energy Performance. The County will incorporate principles of sustainable design and energy efficiency into the Project. The NHDAS review and approval of the design plans and specifications will be based, in part, on the energy performance of the proposed building and equipment.

6. Building Operations and Maintenance. Systems and materials should be selected on the basis of long term operations and maintenance costs, as those costs will be borne by NHDAS over the long-term life of the building. The design of the Project and operating systems

should ensure ease and efficiency of operation and allow for easy and cost effective maintenance and repair during the system's useful life. The NHDAS and NHJB review and approval of the design plans and specifications will be based, in part, on an assessment of the operations, maintenance and long term cost and durability of the proposed building and equipment.

7. Preliminary Design Review. The County shall cause at least five (5) printed sets of construction-level plans and specifications for the Project (the "**Plans and Specifications**") to be provided to the NHDAS at such time as the Plans and Specifications are thirty-five percent (35%) and sixty five percent (65%) complete, respectively, as reasonably determined by the Developer's architect. In the event separate Plans and Specifications are prepared for each project component (e.g., the Building, the Parking Area, etc.), then each set of Plans and Specifications pertaining to the Project shall be provided to the State at the aforementioned thresholds. NHDAS, in consultation with NHJB, shall have a period of fourteen (14) business days from the date such Plans and Specifications are provided by the County or the Developer in which to review such Plans and Specifications and provide comments to the County or the Developer, as the case may be. NHDAS, in consultation with NHJB, shall have a period of seven (7) business days from the date revised Plans and Specifications are provided by the County or the Developer in which to review such revised Plans and Specifications and provide comments to the County or the Developer, as the case may be. In any event, NHDAS, after review and consultation with NHJB, shall have the right to reject any design elements included in the Plans and Specifications which do not conform with the provisions of this Agreement as well as all relevant laws, codes, court standards and DPW design standards as evidenced in the Sample Specs. The State, and its subdivisions and agents, shall conduct any and all review, inspections and walkthroughs at its sole expense and in conformance with the Developer's reasonable worksite safety requirements.

8. Courtroom Mock-up. The County agrees that prior to the submission of the 90% Plans and Specifications (as hereinafter defined) the County and its Developer will provide a physical mock-up of courtroom areas for review and approval by NHDAS and NHJB personnel.

9. Intentionally Deleted.

10. Final Design Review. At such time as the Developer's architect determines that the Plans and Specifications are 90% complete, the County shall cause at least five (5) printed sets of such Plans and Specifications (the "**90% Plans and Specifications**") to be provided to NHDAS for the purpose of determining whether the 90% Plans and Specifications incorporate all of the comments provided by the State during the 35% and 65% design reviews described in Paragraph 7, above. NHDAS and NHJB shall provide final comments on the 90% Plans and Specifications to the County and the Developer within fourteen (14) business days of the date the 90% Plans and Specifications are provided by the County or the Developer, as the case may be.

Once the NHDAS's final comments have been incorporated in the Plans and Specifications and the incorporation of those comments has been reviewed and approved by NHDAS, these plans shall be considered the "**Final Design Plans and Specifications.**"

11. Fire Marshal Review and Comment. The County shall provide, or shall cause its contractor to provide, at least one (1) complete, printed set of the 35%, 65% and 90% Plans and Specifications to the New Hampshire Division of Fire Safety, Office of the State Fire Marshal (the "**State Fire Marshal**"), for review and comment. Any revisions to the Plans and Specifications requested by the State Fire Marshal, shall be incorporated in the Plans and Specifications and completed by the County at no additional cost to the State.

12. ADA Board Review. The County and its architect shall present the sixty-five percent (65%) design plans and specifications, in person, to the ADA Review Board (the "**Board**"). The County shall incorporate reasonable comments made by the Board in the 90% Plans and Specifications to the greatest extent practicable. In any event, the design must be compliant with the ADA. NHDAS shall consider the County's effective incorporation of the Board's comments and ADA compliance in determining whether to approve the ninety percent (90%) Plans and Specifications. Prior to Building Substantial Completion, at a period where safe access is possible, the County shall schedule a site visit for the Board to review the Building.

13. Shop Drawings and Product Submittals. The County shall cause all shop drawings and product submittals for the Project (collectively, the "Shop Drawings") to be submitted to the Clerk(s) of the Works and the NHDAS Project Manager utilizing an electronic shop drawing submittal service selected by the State in its reasonable discretion. NHDAS shall have a period of seven (7) business days to review any and all Shop Drawings and provide its comments thereon to the County or its contractor at the State's sole expense. Once approved, the County will ensure that one hard copy of all submittals are provided to NHDAS.

14. As-Built Drawings. At the conclusion of construction, the County will prepare and provide a full set of As-Built Drawings in physical and CADD format for review and acceptance by NHDAS.

15. Community Involvement. The County agrees that it will engage in reasonable efforts to inform the community of the Project and provide all necessary information sessions for the public. The County shall be solely responsible for the cost of this community outreach.

SECTION 7 - STATE OPT-OUT RIGHTS DURING DESIGN PHASE

1. Overview. The County agrees and understands that the State's commitment to this Project is dependent on the State's satisfaction with the design and project development, including the development of a satisfactory Continuity of Operations Plan, as described in Section 4 and Section 6 of this Agreement.

2. Opt-Out Right. NHDAS shall have the right, upon written notice to the County, to terminate this Agreement without any cost or penalties of any nature whatsoever at any point prior to NHDAS acceptance of the Final Design Plans and Specifications, subject to the provisions of Paragraph 3 of this Section 7. The State shall provide the County with notice of the reasons for the termination. The County shall have a period of ten days to request that the Commissioner of NHDAS ("Commissioner") reconsider the termination. The Commissioner shall consider the request for reconsideration in accordance with the provisions of Paragraph 3 of Section 7 and shall provide a written response regarding the request for reconsideration of the termination within ten (10) days. The Commissioner's determination with respect to the County's request for reconsideration shall be final and shall not be subject to administrative appeal or the alternative dispute resolution procedures set forth in Section 1, Paragraph 12 of this Agreement; provided, however, that the foregoing shall not be deemed to limit the right of the County to file and prosecute claims in connection with the opt-out right described herein in the venue specified in Section 1, Paragraph 12 of this Agreement.

3. Exercise of State's Discretion. NHDAS shall have complete discretion to exercise the opt-out rights described in this section, except that the State shall not exercise the right in a manner that is arbitrary, capricious or violates the implied covenant of good faith and fair dealing.

4. County At Risk. The County agrees and understands that any and all work performed prior to the State's acceptance of Final Design Plans and Specifications is performed at the sole risk of the County. The County expressly waives a right to claims for compensation, damages, unjust enrichment, quantum meruit, or any other claim in law or in equity that it may have against the State for the work performed prior to the State's acceptance of Final Design Plans and Specifications.

5. Use of Design Plans After Opt-Out. Notwithstanding any provisions to the contrary, to the extent that NHDAS exercises the opt-out rights in this section and subsequently desires to utilize the design documents prepared as part of this Project, the County shall consider said request and, if accepted by the County, NHDAS will compensate the County for the use of those plans based on the Fair Market Value of the work performed as determined by an independent design consultant contracted by NHDAS and approved by the County. This consultant shall be compensated solely by NHDAS.

6. Procedure After Acceptance of Final Design and Specifications. NHDAS reserves the right to terminate this Agreement for cause in accordance with the procedures set forth in Section 11 after acceptance of Final Design Plans and Specifications.

SECTION 8 - CONSTRUCTION AND EXECUTION REQUIREMENTS

1. Overview. The construction of the Project shall be the responsibility of the County and its Developer, contractors and consultants and shall be performed in accordance with the Final Design Plans and Specifications approved by NHDAS. The County assumes all risk with respect to construction or renovation activities on the Project. NHDAS at all times shall have the right to review and reject work that does not comply with the Final Design Plans and Specifications as well as applicable laws, codes and regulations.

Upon completion of Final Design Plans and Specifications through the process set forth in Section 6, the County shall submit to NHDAS said Final Plans and Specifications together with the bonds and insurance certificates required under Section 5. Upon the State's written acknowledgment of receipt of the approved Final Plans and Specifications and the applicable insurance certificates and bonds, the County and Developer shall, without delay, commence construction of the Project with all reasonable dispatch.

2. Project Communication. Each party agrees to cooperate and consult with the other party throughout the entire Project and each party shall have the right to attend any meetings on the Project. To the extent permitted by law, NHDAS and NHJB shall have the right to review the content of project communications the County may have with its Developer and contractors. Likewise, to the extent permitted by law, the County shall have the right to review the content of project communications the State may have with its Clerk of the Works. NHDAS shall be notified of regularly scheduled job meetings on the Project. NHDAS's duly authorized representative shall also receive copies of all minutes issued with respect to such job meetings. To the extent the State Clerk of the Works or State Engineer (as hereinafter defined) calls job meetings on the project, the County, the Developer and their respective contractors and/or consultants shall be notified of such meetings and shall receive copies of the minutes issued with respect thereto.

3. Pre-Construction Meeting. The County shall conduct a pre-construction meeting with the Developer and representatives of NHDAS and NHJB prior to the start of the construction work. At least two weeks prior to this meeting, the County or its Developer shall provide a proposed agenda to NHDAS for review and comment. An exemplar of the proposed agenda is provided in Section 1300 of the Sample Specs. The County or its Developer shall be responsible for preparing and circulating minutes of this meeting.

4. Progress Meetings During Construction. The County and/or its Developer shall schedule and administer meetings on at least a bi-weekly basis once construction activities on the Land have commenced. The County and Developer Project Manager shall attend along with the NHDAS Project Manager, NHJB Project Lead, State Engineer, the General Contractor and all

major subcontractors, as needed. The County or Developer will be responsible for preparing a draft agenda and taking and circulating meeting minutes.

5. State and County Clerks of the Works and State Engineer. The State will appoint up to two (2) clerks of the works (collectively, the “**State Clerk of the Works**”) who will be compensated through the holdback provisions set forth in Section 3 hereof. The State Clerk of the Works shall have the power to review the work on the Project at any time to ensure compliance with the Final Design Plans and Specifications. The State will also assign an engineer (the “**State Engineer**”) to provide supervision of the State staff and general oversight of the Project. The State Engineer will not be staffed full time on this Project and shall be paid directly through DAS. The State Clerk of the Works along with the State Engineer and NHDAS Project Manager shall have the right to reject work that is not in compliance with the Final Design Plans and Specifications, laws, codes and regulations. Likewise, the County will appoint one (1) clerk of the works (the “**County Clerk of the Works**”), who will be compensated solely by the County. The County Clerk of the Works shall serve as the County’s primary, on-site representative and shall have the power to review the work on the Project at any time to ensure compliance with the Final Design Plans and Specifications.

6. Access to the Site. The County agrees to grant full access to all areas of the Project at all times to NHDAS, NHJB, contractors and consultants hired by the State and government officials having jurisdiction. Subject to reasonable worksite safety protocols established by the County and/or the Developer; provided, however, that the State shall make best efforts to provide at least twenty-four (24) hours’ prior notice to the County and the Developer if any party other than the State Clerk of the Works, State Project Manager Stephen Lorentzen, State Engineer Jeffrey Shute, or NHJB Project Lead Hon. Tina Nadeau, or their designee, intends to access the site. The County shall provide proper facilities for such access and inspection. No observation or inspection performed under this section shall operate as a waiver by the State of any provision of this Agreement.

7. Pre-Installation Meetings. During development of the Final Design Plans and Specifications, NHDAS may request a requirement for pre-installation meetings for specific components of the Project. In such instances, the County shall convene such meetings and require the attendance of all parties directly affecting, or affected by, the specific work. The County shall notify the State Project manager and State Clerk of the Works seven (7) days in advance of meeting date. The County or Developer shall record minutes and distribute copies within two days after meeting to participants, with one copy to each person in attendance and one to those affected by decisions made, as identified by the State Clerk of the Works promptly following such meeting.

8. Inspection. An inspection by the State or employees or agents of them shall not relieve the County and/or its Developer of their responsibilities to fulfill the obligations of this Agreement or the approved plans and specifications. NHDAS will retain the right to reject defective and/or non-conforming work.

9. Safety/Accident Prevention. The County agrees that it shall not require any laborer or mechanic employed in the performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to the laborer's health or safety as determined by construction safety and health standards of the Occupational Safety and Health Administration, United States Department of Labor, which standards include, by reference, the established Federal Safety and Health Regulations for Construction. These standards and regulations comprise Part 1910 and Part 1926 respectively of Title 29 of the Code of Federal Regulations, as may be revised from time to time. In the event any revisions in the Code of Federal Regulations are published, such revisions will be deemed to supersede the appropriate Part 1910 and Part 1926, and be effective as of the date set forth in the revised regulation.

10. Hazardous Materials. The County agrees that it is solely responsible for addressing and remediating hazardous materials on the Land prior to the transfer of the State Parcel, to the extent the presence of such hazardous materials on the State Parcel was not caused by the negligence or willful misconduct of the State or its employees, agents and contractors. The County shall not be entitled to additional compensation for costs incurred related in any way to the discovery, remediation or removal of hazardous waste.

The health and safety of employees, the general public, and the potential of damage to the overall environment is possible if hazardous materials are not recognized, reported, and the appropriate action taken to dispose of, remove from the site, or otherwise contain the possible contaminant. Special attention is drawn to State laws RSA 141-E, Asbestos Management and Control, RSA 147-A, Hazardous Waste Management, and RSA 149M, Solid Waste Management. Disposition of the hazardous material or toxic waste shall be made under the requirements and regulations of the Department of Environmental Services. Any work required to dispose of these materials and any remedial work shall be disclosed in writing to NHDAS prior to the transfer of the State Parcel. The County warrants as part of this transfer that any known hazardous materials will be remediated in accordance with the requirements of applicable environmental laws prior to the transfer of the State Parcel.

11. Laws, Permits, Fees and Taxes. The County shall comply with all laws, ordinances regulations, orders or decrees and shall give all notices required thereby. The County shall take out and pay for all approvals, permits, certificates and licenses required by Laws, pay

all charges and fees, including all inspection fees, and pay for (or cause the appropriate contractor to pay for) all utilities required for the proper execution of the work.

The County shall be responsible for all applicable taxes related to the Project. The County shall draw its Contractors attention to RSA 72-B, Excavation Tax and related administrative rules of the Department of Revenue Administration, which among other provisions, levies a tax on earth and excavations as defined by RSA 155-E. Contractors are required, on a yearly basis, to file a Notice of Intent to Excavate in each municipality where excavation operations are anticipated. Additionally, the Contractor shall post the Excavation Tax Certificate, received from the Department of Revenue Administration, at the Contractor's project bulletin board.

12. Permit Inspections. Code inspections may be performed by any code enforcement official having jurisdiction; however, to the extent permitted by law, the State enforcement agencies shall be used for these inspections. All such inspections shall be coordinated by the County, with the exception of the review by the State Fire Marshal's Office, which is addressed in Section 10, which will be coordinated through NHDAS.

13. No Contractual Relationship between the State and the Developer. Nothing contained in this Agreement shall be construed as creating any contractual relationship between the Developer, and any contractor, subcontractor, or consultant and the State. The State disavows any relationship with the County's Developer or contractors and shall have no payment obligation to them.

14. No Liens. The County shall promptly seek to cause to be discharged of record of any lien, attachment or other claim asserted against the Land, immediately upon receipt of written notice of the filing of any such claim. The County shall have any such lien, attachment or lien bonded, removed or discharged within 60 days of receipt of such notice. Without limiting the rights of the State as set forth in Section 5 hereof, the County covenants and agrees to defend, and indemnify and save harmless the State from and against any and all claims, demands, suits, actions, judgments, recoveries, and expenses, including but not limited to the fees and expenses of attorneys, against or incurred by the State in connection with any claim by any contractor, subcontractor, workman, material supplier, design professional or any other party on account of work performed or goods or services delivered in connection with the performance of the Project,

15. Construction Trailer. The County will provide for NHDAS's exclusive use, at no cost to NHDAS, a fully equipped construction trailer with wireless printer, internet access, heat, air conditioning, utilities, desks, plan racks and reference tables. The State's Clerk of the Works shall have access to a Port-o-Potty while on the construction site.

16. Duty to Act in an Emergency. In case of any emergency that threatens loss or injury of property, and/or safety of life (an “**Emergency Situation**”), the County shall have a duty and the authority to act as the situation may warrant. The State may, but shall have no duty to, take reasonable steps to mitigate the damage or loss to the County. In either event, the State shall have no duty to undertake any specific acts and shall have no liability for actions or inactions taken in response to an emergency; provided, however, that the State shall have notified the County immediately upon becoming aware of such Emergency Situation.

17. Materials and Workmanship. The County agrees that all work performed and materials and products furnished shall be in conformity, within indicated tolerances, with the material and construction requirements shown in the Final Design Plans and Specifications. Subject to the provisions of Section 10, Paragraph 6 of this Agreement, NHDAS or NHJB’s failure to reject any portion of the work shall not constitute implied acceptance nor in any way release the County from its requirements under this Agreement.

The County will ensure that all work on the Project will be performed in a skillful and workmanlike manner. NHDAS may require the County to remove from the work any employees that NHDAS reasonably deems incompetent, careless, insubordinate, or otherwise inconsistent with accepted industry standards of care and quality. Such request will be made to the County in writing.

18. Changes in Work. The County agrees that it is solely responsible for charges arising out of or related to extra work or materials not contemplated in the Final Design Plans and Specifications, except for any changes in work expressly requested by the State. Changes made necessary to comply with any applicable code or regulations shall be the responsibility of the County even if requested by NHDAS.

Nothing in this Agreement shall either preclude the County and NHDAS from mutually agreeing to amend the plans and specifications for convenience, or require the County and NHDAS to mutually agree to amend the Plans and Specifications for convenience, but in no event shall such modifications and amendments modify the purchase price in this Agreement.

19. Patents. The County will hold the State and its officers, agents, servants, and employees harmless from liability of any nature, including costs, expenses and legal fees, for or on account of any alleged infringement on any patented or unpatented invention, process, article or applicable items manufactured or used in the performance of the Contract, including its use, unless otherwise specifically stipulated in the Contract Documents.

20. No Assignment. Except as set forth below, no person other than the County shall acquire any interest in this Agreement or claim against the State. Notwithstanding the foregoing, the County shall have the right to enter into the Construction Contract, pursuant to which the Developer shall carry out the construction obligations under this Agreement. Regardless of the terms of the Construction Contract, the County shall remain responsible for all of its obligations to the State under this Agreement. The County shall further have the right to assign its interest in this Agreement to the lender providing construction financing to the Developer in connection with the Courthouse Facility (the "Lender"). Any such assignment shall be subject to all of the terms and conditions in this Agreement. Regardless of the terms of any assignment between the County, Developer and/or Lender, the rights and remedies of the State under this Agreement shall remain unchanged and the terms of this Agreement shall take precedence over any conflicting terms in the assignment. In the event that some right or obligation of the County has actually been assigned to a third party, the County shall advise the State of that assignment within three (3) business days of the effective date of the assignment.

21. Superintendent. The Developer's contractor shall employ a qualified superintendent (the "**Superintendent**") whose appointment shall be subject to the review and approval of NHDAS. The Superintendent shall be in attendance at the site full time during the performance of the Work. The Superintendent shall be a supervisory employee and shall not perform direct labor on the project. The Superintendent shall be a competent English speaking person capable of reading and thoroughly understanding the contract documents and thoroughly experienced in the type of work being performed. The State hereby approves the appointment of Matthew Beaulieu of Milestone Engineering & Construction, Inc. as the Superintendent.

22. Timeliness of Work. The County recognizes that time is of the essence in the performance of this Agreement. Prior to starting construction, the County and or its Developer shall prepare and submit a construction Project Work Plan to the State for review and approval. This Plan shall accurately reflect the status of the Project schedule, critical events and task dependencies. This Plan shall be updated as necessary, but not less than once every four weeks. Any significant changes to the construction Project Work Plan shall require the prior approval of the State. In the event of a delay in the schedule, the County shall immediately notify the State in writing.

23. Completion Date. The County agrees that Building Substantial Completion shall be no later than July 1, 2019 and Project Substantial Completion shall be no later than July 1, 2020. In the event that the County fails to meet the completion dates set forth in this schedule, the State reserves the right to terminate this Agreement in conformance with Section 11.

24. Retention of Records. For a period of three years after NHDAS makes final payment on this Agreement, the County shall preserve and make available to the State at all

reasonable times and at no additional charge, all books, records, documents within the County's control relating to the work on this Project.

25. Commissioning. The County agrees that the Building will be commissioned prior to Building Substantial Completion by a Commissioning Agent approved by the State. The Commissioning Agent shall be involved from the 65% design plans through Building Substantial Completion. The State shall receive a copy of all commissioning reports generated as part of this Project. A detailed specification relating to this Commissioning shall be incorporated into the Project plans and specifications.

26. Partial Occupancy or Use. The County agrees that the State may take occupancy or use of completed or partially completed portions of the Building prior to the date of Building Substantial Completion, so long as such occupancy or use does not interfere with the construction activities of the County with respect to the Building or any aspect of the Project, pursuant to a mutually acceptable written agreement that may be negotiated between the parties. Said partial occupancy or use shall have the approval of the code enforcement authorities having jurisdiction.

SECTION 9 – LABOR LAW REQUIREMENTS

1. Overview. The State intends that the Project shall comply with all labor laws that would be applicable to State of New Hampshire Public Works projects, as follows:

- A. Work Certificate for Contractors Before Beginning Their Work on Public Projects
 - 1. Prior to any work being done on the Project by a contractor, such contractor, including ALL subcontractors and independent contractors, shall provide a Work Certificate to the County and/or the Developer.
 - 2. Subcontractors, including main and lower tier, shall not be allowed to perform any work until their Work Certificates have been submitted to the County.
 - 3. The County or its Developer shall maintain a log of all submitted subcontractor Work Certificates on-site. The log shall identify all main and lower-tier subcontractors and the status of the Work Certificate submission. This log shall be reviewed at each Progress Meeting to coordinate scheduled work with required Work Certificate submissions.
 - 4. The County shall keep a copy of all Work Certificates on the jobsite, either in electronic or hardcopy form.
- B. The Contractor shall obey all applicable State and Federal Labor laws.
- C. The County shall provide to the State a list of the names and addresses of the CEO, CFO, other LLC principals, and each subcontractor to be used in the performance of the contract prior to their work on the Project. The name and address of each subcontractor shall be provided on the Subcontractor/Employee Master List (below).
- D. The County shall maintain a Subcontractor/Employee Master List (Master List) of all personnel performing work on the job site, including the Developer and contractor's employees, all subcontractors and subcontractor employees, and all independent contractors. The Master List shall identify which entity has hired each subcontractor and independent contractor and which entity is providing Workers Compensation coverage for the on-site personnel. The Master List shall also confirm that each employee has an OSHA-10 certification. Subcontractors and independent contractors shall not be allowed to perform any work until they have been correctly identified on the Master List.
- E. The Master List shall be posted on the jobsite and updated as needed to reflect any new subcontractors and independent contractors. The Master List shall be reviewed at each Progress Meeting. On a monthly basis, the County shall provide

to the State Engineer a .pdf or Microsoft Word file of the Master List, showing all current subcontracts for the purposes of posting onto the State's website.

- F. The County shall maintain a daily log-in sheet of all personnel performing work on the jobsite. Personnel shall list their name, name of employer or identify themselves as independent contractors. No contractor, subcontractor or independent contractor performing work on the job site shall be allowed on site without first signing the daily log-in sheet.
- G. The County shall verify that personnel listed on the daily log-in sheet are also listed on the Master List. If personnel are not listed on the Master List, they shall not be allowed on site until their employer has certified, in writing, that the employee is covered under Workers Compensation coverage for the appropriate work classification noted on the Work Certificate.
- H. The County shall post six (6) mandatory labor posters in a conspicuous, weather-tight place at the jobsite: Protective Legislation Law; Criteria to Establish an Employee or Independent Contractor; NH Minimum Wage Law; and Whistleblowers Protection Act; Workers Right to Know; Equal Pay Law. These posters can be found at the NH Dept. of Labor website http://www.labor.state.nh.us/mandatory_posters.asp
- I. The County shall maintain, on the jobsite, copies of OSHA-10 certificates for all personnel listed on the Master List.

SECTION 10- FINAL COMPLETION AND WARRANTY

1. Procedure for Completion of Work. The Completion of the Project will be in three phases. First, the County will apply for NHDAS approval that Building Substantial Completion has been achieved. Second, the County shall apply for NHDAS approval that Project Substantial Completion has been achieved. The issuance of that finding by NHDAS and the State Fire Marshal's Office shall precipitate the transfer of title to the State Parcel in accordance with the provisions of Section 2 and Section 3 of this Agreement. The parties acknowledge that, depending upon the sequence of construction activities on the Land, Building Substantial Completion and Project Substantial Completion may be achieved simultaneously or near-simultaneously. Finally, following the Closing Date, the County will apply for NHDAS's verification of Final Completion in accordance with the provisions of Paragraph 5 of this Section 10, which, once obtained, shall trigger the release of the balance of the Purchase Price from escrow as described in Paragraph 1(b) of Section 3 of this Agreement.

2. Building Substantial Completion. At the point where the County believes the Building is substantially complete, it shall provide written notice to NHDAS with a copy to NHJB that the building is ready for occupancy by NHJB. This notice shall at a minimum include:

- 1.) A Punch List of items to be completed after Building Substantial Completion and the anticipated timeframe for that work;
- 2.) A copy of completed elevator, plumbing and electrical inspections (the State shall cooperate reasonably with the County and/or the Developer to obtain such inspections in a timely manner);
- 3.) Certification that the County and/or its Developer have completed the closeout procedures identified in Section 1700 of the "Sample Specs", including final cleaning, starting of systems under the review of the State, demonstrations and instructions to all applicable State personnel, testing, adjusting and balancing of systems, production of as-built drawings, Operations & Maintenance manuals, Materials and Finish Manuals, Equipment and Systems Manuals and product warranty documentation. The full closeout procedure for State projects as evidenced in Section 1700 of the Sample Specs shall be incorporated by the County into the final Specifications;
- 4.) The established date of Building Substantial Completion; and
- 5.) The final form of Interim Occupancy Agreement for execution on behalf of the State and the County, if applicable.

3. Final Inspection on Building Substantial Completion. Upon receipt of a complete written notice of Building Substantial Completion as described in Paragraph 2, NHDAS shall have a period of ten (10) business days in which to make a final inspection to determine if Building Substantial Completion has been achieved. NHDAS will make best efforts to have the State Fire

Marshal's Office make a separate inspection within the aforesaid ten (10) business day period to determine if the Building is ready for full occupancy by NHJB. By the end of the aforementioned ten (10) business day period, NHDAS, in consultation with NHJB, shall either (i) notify the County in writing that it believes Building Substantial Completion has been achieved (and that the State Fire Marshal has issued or is prepared to issue a Certificate of Occupancy), or (ii) notify the County in writing of the issues to be addressed before NHDAS will consider Building Substantial Completion to have been achieved, in which event the County, through the Developer, shall proceed promptly to address such outstanding issues. After a finding of Building Substantial Completion by NHDAS, the issuance of a State Fire Marshal Certificate of Occupancy, and upon execution of an Interim Occupancy Agreement, if applicable, NHJB may move court operations into the Building. The State's written confirmation of Building Substantial Completion shall include a detailed list of items to be addressed before the State will consider that Project Substantial Completion has been achieved.

4. Project Substantial Completion. Upon written notice from the County that it has completed the items indicated as necessary for Project Substantial Completion, which notice shall include an anticipated date of Final Completion and a proposed Punch List for the work remaining to be completed with respect to the Project, NHDAS shall have a period of ten (10) business days to conduct a further investigation and provide written notice to the County that either (i) Project Substantial Completion has been achieved, or (ii) Project Substantial Completion has not been achieved, in which case such notice shall identify the items that must be addressed by the County and/or the Developer in order for the State to find that Project Substantial Completion has been achieved. NHDAS will make best efforts to have the State Fire Marshal's Office review the Project within the aforementioned ten (10) business day period to ensure that Project Substantial Completion has been achieved. This process will continue, with the exercise of diligent efforts by both parties, until the State notifies the County in writing that Project Substantial Completion has been achieved and that the State is prepared to take ownership of the Courthouse Facility as set forth under the procedures set forth in Section 2 of this Agreement.

5. Final Completion. Upon written notice from the County that it has completed all of the items on the Punch List for the Project (such status being hereinafter referred to as "**Final Completion**"), the State will have a period of ten (10) business days to conduct a final investigation and provide written notice to the County that either (i) it agrees that Final Completion has been achieved, or (ii) it believes Final Completion has not been achieved, in which case such notice shall identify the items that must be addressed by the County and/or the Developer in order for the State to find that Final Completion has been achieved. This process will continue, with the exercise of diligent efforts by both parties, until the State notifies the County in writing that Final Completion has been achieved.

6. Warranty. The County agrees to warranty the work for a period of one year after the transfer of the State Parcel under this Agreement. Further, the County will ensure that all product warranties are transferrable to the State upon transfer of the State Parcel. Approximately 30 days prior to the expiration of the comprehensive one year warranty period, the County shall schedule an appointment with NHDAS for a re-inspection of the work, and shall thereafter inspect the work at the time scheduled. Based on the inspection and on prior inspections, NHDAS shall issue a “**Warranty Repair List**” of items to be corrected by the County. The County shall make the repairs and/or replacements listed within 30 days of the issuance of the Warranty Repair List unless otherwise agreed upon by the State.

If, within any warranty period, repairs or changes are required in connection with guaranteed work which, in the reasonable opinion of NHDAS, are rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the final approved plans and specifications, the County shall, promptly upon receipt of notice from NHDAS, and at the County’s expense:

1. Place in satisfactory condition, in all material respects, all such guaranteed work, and correct all defects therein.
2. Make good all damage to the State Parcel, the Building, or to the equipment therein or contents thereof, which, in the reasonable opinion of NHDAS, is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the Final Design Plans and Specifications.
3. Restore any damage to the State Parcel, the Building, or the equipment therein or contents thereof, caused by the County in connection with the performance of its obligations under this Paragraph 6.

If the County, within ten (10) business days following written notice from the State, fails to proceed promptly to comply with the terms of the warranty set forth in this Paragraph 6, the State may have the defects corrected and the County shall be liable for all reasonable expenses actually incurred by the State in connection with such correction.

SECTION 11 -TERMINATION FOR CAUSE

1. Termination for Cause. NHDAS may, without prejudice to any other right or remedy, deem this Agreement terminated for cause if any of the following defaults shall occur and not be cured within fifteen (15) days after the giving of notice thereof by NHDAS to the County.

A. The County has filed a petition, or a petition has been filed against the County with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the Developer without its consent and is not dismissed within sixty (60) days; or if the Developer becomes insolvent; or if the Developer consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the Developer or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the Developer makes an assignment for the benefit of creditors;

B. The County and its contractors have abandoned the Project.

C. The County cannot finance the Project;

D. In the absence of an event of force majeure or other event outside of the reasonable control of the County, the County fails to complete the Building or Project by the specified completion dates in Section 8, Paragraph 23.

E. The County fails, without legitimate basis for objection, to make reasonably required payments to Contractors, Subcontractors or for materials, equipment, or labor;

F. The County materially breaches the Continuity of Operations Plan, which breach is not cured within the timeframes set forth in Section 4 of this Agreement;

F. The County has assigned all or any portion of its interest in this Agreement or claims thereunder without the consent of NHDAS, except as permitted under Section 8, Paragraph 20 of this Agreement;

G. The County has failed to comply with applicable laws, codes, ordinances or regulations;

H. The County fails to maintain, or provide to the State evidence of the insurance or bonds required by this Agreement; or

I. The County has failed to prosecute the work or any portion thereof to the standards required under the approved Final Design Plans and Specifications.

2. Remedies Upon Termination. In the event of such termination, and without limiting any other available remedies, NHDAS shall be entitled to any of the following remedies:

- A. Hold the County liable in damages for a breach of contract, in which event the Liquidated Damages contemplated in Section 5, Paragraph 4 of this Agreement shall be the State's sole and exclusive remedy; or
 - B. Purchase the State Parcel for the Purchase Price as set forth in Section 2, less the amount of money necessary to complete the Project as determined by a third-party estimator agreed to by the State and the County; or
 - C. Require that the County assign its interest in the contract with the Developer and Surety Bond to the State. The ability to assign these instruments shall be a part of the County's contract with the Developer.
3. Termination for Convenience. The Parties may also mutually terminate this Agreement for Convenience under any terms which are mutually acceptable to the Parties.

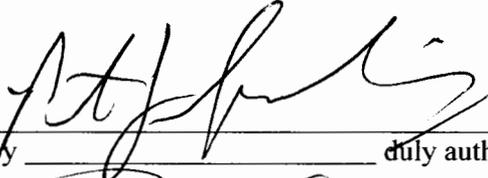
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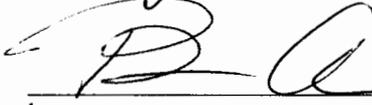
CONTRACT SIGNATURE PAGE

By executing this Contract, the State of New Hampshire Department of Administrative Services and Merrimack County agree to be bound to the terms and conditions set forth herein:

Merrimack County

Dated _____ 2016

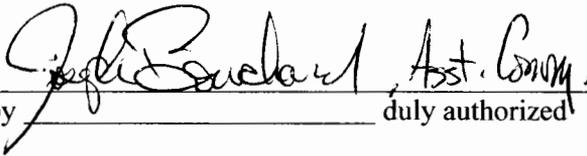

by _____ duly authorized


by _____ duly authorized


by _____ duly authorized

**Department of
Administrative Services**

Dated Dec. 8 2016


by _____ duly authorized

New Hampshire Judicial Branch

Dated 12/8 2016

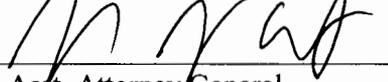
This is to certify that the undersigned concurs in the execution of this agreement.


by _____ duly authorized

Attorney General

Dated 12/8 2016

This is to certify that this contract has been reviewed by this office, and is approved as to form and execution.

by 
Asst. Attorney General

Governor and Council - Final

This is to certify that the Governor and Council on _____ approved the above-mentioned contract.

Secretary of State

Dated _____ 2016

by _____
Secretary of State

SUPPLEMENTAL CONTRACT AFFIDAVIT

This is to certify that the undersigned have reviewed and authorized the alterations to this contract agreement which have taken place since the date of execution of the original Contract Affidavit. This document further authorizes the use of the signatures in the original Contract Affidavit to be appended to this updated contract document and that those signatures remain valid and in full force and effect with respect to this updated contract agreement.

**Department of
Administrative Services**

Dated Jan. 19, 2017


by Assistant Commissioner duly authorized

New Hampshire Judicial Branch

Dated 1/19/ 2017


by Chief Justice duly authorized
Superior Court

Attorney General

Dated 1/19/ 2017

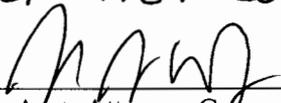
by 
Asst. Attorney General

EXHIBIT A

Legal Description of the Land

Beginning at a concrete bound marking the northeasterly most corner of the premises herein described; said bound also marking the southwesterly intersection of the sidelines of Court Street and North Main Street; thence, along the westerly sideline of said North Main Street S27°36'40"E a distance of 238.94 feet to a point marking the northwesterly intersection of the sidelines of North Main Street and Pitman Street; thence, along the northerly sideline of said Pitman Street S61°32'40"W a distance of 251.19 feet to a point marking the division line of lands now or formerly Merrimack County known as City of Concord Tax Map 46, Block 1, Lot 1 and Lot 11 respectively; thence, continuing on the same course along said Pitman Street, running by its westerly terminus, and running along land now or formerly of Concord Housing Authority S61°32'40"W a distance of 165.97 feet to a concrete bound situated on the easterly sideline of Montgomery Street; thence, following the sideline of said Montgomery Street N24°03'30"W a distance of 239.09 feet to an iron rod situated at the southeasterly intersection of the sidelines of Montgomery Street and Court Street; the along the southerly sideline of Court Street N61°28'15"E a distance of 150.45 feet to a point marking the division line of said Lot 11 and Lot 1; thence, continuing along said Court Street N61°28'15"E a distance of 251.90 feet to the point of beginning.

The foregoing being identified as City of Concord Tax Map 46, Block 1, Lots 1 and 11 and containing 97,785 Sq. Ft. or 2.25 Ac.

EXHIBIT B

Plan of the Land

[See attached]

EXHIBIT C

Temporary Parking Plan

[See attached]

NEW MCSC – CONSTRUCTION-PERIOD PARKING



- A – EXISTING LOT (30)
- B – 4 COURT STREET (20)
- C – NEW TEMPORARY LOT (30)
- D – NASH “TAXICAB” (30)

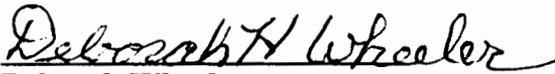
CLERK'S CERTIFICATE

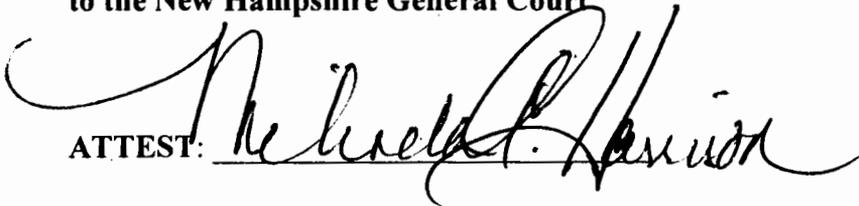
I, DEBORAH WHEELER, hereby certify that I am the duly elected Clerk of the Merrimack County Delegation to the New Hampshire General Court (the "Merrimack County Delegation").

I hereby certify that attached hereto as **Exhibit A** is a true copy of a vote taken at a meeting of the Merrimack County Delegation, duly called and held on November 4, 2016, at which a quorum of the Merrimack County Delegation was present and voting.

I hereby certify that said vote has not been amended or repealed and was in full force and effect as of November 29, 2016, the date on which the Merrimack County Board of Commissioners (the "Board of Commissioners") executed the contract to which this certificate is attached. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the Board of Commissioners has full authority to bind Merrimack County (the "County"). To the extent that there are any limits on the authority of the Board of Commissioners to bind the County in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

Executed as of the 30th day of Nov., 2016


Deborah Wheeler
Clerk, Merrimack County Delegation
to the New Hampshire General Court

ATTEST: 

Resolution of the Merrimack County General Court Delegates

At a meeting held on the 14th day of November, 2016, a quorum of the Merrimack County General Court Delegation (the "Delegation") was present and resolved as follows:

WHEREAS, Merrimack County (the "County") desires to construct and develop a new Merrimack County Superior Courthouse containing at least 34,500 square feet (the "New Courthouse") and a related parking area consisting of no fewer than 150 parking spaces (collectively, the "New Courthouse Development") on the existing Merrimack County Superior Court site located at 163 North Main Street in Concord (the "Project Site"), and raze and remove the adjacent building on the Project Site which houses the Merrimack County Registry of Deeds, Registry of Probate and the Probate Court (the "Registry Building") (the New Courthouse Development and the removal of the Registry Building are collectively referred to herein as the "Project");

WHEREAS, the County also desires to renovate the existing Merrimack County Superior Courthouse to be used for certain County functions;

WHEREAS, following completion of the Project, the County desires to convey the New Courthouse Development to the State of New Hampshire, by warranty deed, for a price of \$15,700,000.00; and

WHEREAS, the County desires to enter into a contract with the State of New Hampshire regarding the construction and conveyance of the New Courthouse Development (the "State Contract").

NOW THEREFORE, be it hereby:

RESOLVED: That the County understands and approves the Project.

RESOLVED: That the County authorizes the Merrimack County Board of Commissioners (the "Board of Commissioners") to take all actions which are necessary or proper to complete, consummate or effectuate the Project, and to execute and deliver on behalf of the County any documents, instruments or agreements that it shall deem necessary or desirable in order to consummate the Project, including, without limitation, the State Contract, a warranty deed conveying the New Courthouse Development to the State and such other documents as may be reasonably required in order to consummate such conveyance, with such changes, modifications and alterations thereto as it shall deem necessary, proper or advisable, and such execution and delivery shall be conclusive evidence that the same have been in all respects approved, authorized and adopted.

Dianne E. Schmitt
Name:

[Signature]
Name:

Scarlette L. Peluso
Name:

Greg Sanden
Name:

[Signature]
Name:

Mary Jane Wallner
Name:

Alyson Person
Name:

David Kirby
Name:

Paula Bradley
Name:

Howard Muffett
Name:

[Signature]
Name:

M. Nyles
Name:

Dad B. DeWitt
Name:

[Signature]
Name:

Christy J. Barlow
Name:

Clara Kapf.
Name:

[Signature]
Name:

Yary Stuart Gile
Name:

Frank R. Kolowski
Name:

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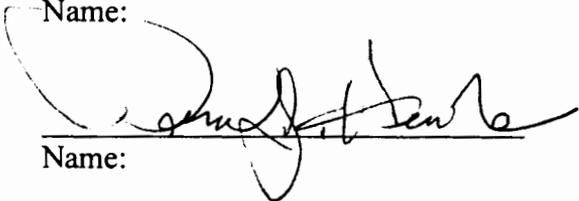
Name: _____


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Lucy M. Fraser
Name: _____

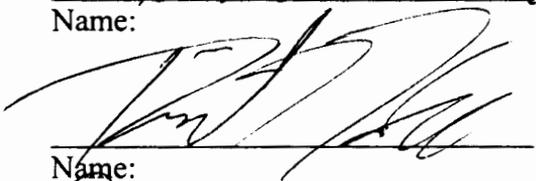
Name: _____


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Barbara C. French
Name: _____

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Name: _____

Deborah H. Wheeler
Name: _____

Name: _____