

PO # 4500638352

## BETWEEN THE DEPARTMENT AND CONTRACTOR

CONTRACT NO. D.G.S. 961-16.1, PHASE 2

COLLECTIVE NO.: CN00034572

This CONTRACT, executed this 12th day of October 2011, by and between the Department of General Services, created by Act No. 45 of July 22, 1975, hereinafter called "DEPARTMENT" and BOGNET, INC. at this address: ROUTE 924-HUMBOLDT, P. O. BOX 206, HAZLETON, PA 18201 a corporation incorporated under the Laws of the State of Pennsylvania its successors and assigns, hereinafter called "CONTRACTOR".

### ARTICLE 1 – THE CONTRACT DOCUMENTS

The Contract Documents consist of the Standard Form of Contract, the Notice to Bidders (if procured through competitive sealed bids), the Instructions to Bidders (if procured through competitive sealed bids), the Bid Proposal (if procured through competitive sealed bids), the Notice to Proposers (if procured through competitive sealed proposals), the Request for Proposals (if procured through competitive sealed proposals), the Contractor's entire proposal (if procured through competitive sealed proposals), the Contract Bonds, the Conditions of the Contract (General, Special, Supplementary, and other Conditions), the drawings of all Prime Contracts, the specifications of all Prime Contracts, all bulletins and addenda issued prior to execution of the Standard Form of Contract, all change orders, all schedules, and the Administrative Procedures of the Bureau of Construction. These form the Contract and are incorporated by reference as if fully set forth herein. To the extent that any of these documents are amended by statute, the statutory language will control.

ORIGINAL COPY

## ARTICLE 2 – THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the construction of Contract No. D.G.S. 961-16.1, Phase 2, Construction of Unheated Storage Building, PA National Guard Armory – Reading, 2601 River Road, Reading, Berks County, Pennsylvania

## ARTICLE 3 – PROFESSIONAL

The Professional for this Project is Department of Military and Veterans Affairs, Bureau of Facilities & Engineering, State Armory Board, Fort Indiantown Gap, Annville, PA 17003

## ARTICLE 4 – TIME OF COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall be commenced upon the effective date of the Contract. The Contractor shall commence operations on site on site no later than ten (10) days after the Initial Job Conference or by the date established by the Letter of Intent (if issued) and shall complete all Contract Work to the satisfaction and approval of the Department, on or before the milestones established in the Master Project Schedule. Contractor further agrees that time is of the essence of this Contract, and that, if the Contractor fails to complete the Work within the time specified above, the Contractor will pay the Department, as Liquidated Damages, and not as a penalty for such failure, the sum of Eighty and -----00/100 Dollars (\$80.00) per day for each and every calendar day after the selected interim milestone dates and the contract completion date until the Work is completed and accepted. The Department may extend the completion date of the Contract for causes set forth in the General Conditions of the Contract and, which, in fact, delay the completion of said Work. In such case, Contractor is liable for said Liquidated Damages only after the expiration of the extended period.

## ARTICLE 5 – CONTRACT SUM

The Department will pay the Contractor for the performance of the Work, subject to additions and deductions by change order, as provided in the General Conditions of the Contract, the contract sum of One Hundred Twenty-Two Thousand and -----00/100 Dollars (\$122,000.00). Payment will be made as set forth in the General Conditions of the Contract. Deductions from or additions to this sum will be made as set forth in the General Conditions of the Contract.

## **ARTICLE 6 – PROGRESS PAYMENTS**

Based upon applications for payment submitted to the Department by the Contractor, the Department will make progress payments on account of the Contract Sum to the Contractor, in accordance with the provisions of the Prompt Payment Act, 62 Pa. C.S. §3931 *et seq.*, as amended, which Act is incorporated herein by reference and made a part hereof as if those provisions were fully and at length herein recited, except that, where said Act refers to the Commonwealth of Pennsylvania or a Department thereof, it is deemed to refer to the Department of General Services.

## **ARTICLE 7 – FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, will be paid by the Department to the Contractor in accordance with the provisions of the Prompt Payment Act, 62 Pa. C.S. § 3941 *et seq.*, as amended, which Act is incorporated herein by reference and made a part hereof as if those provisions were fully and at length herein recited, except that, where said Act refers to the Commonwealth of Pennsylvania or a Department thereof, it is deemed to refer to the Department of General Services.

## **ARTICLE 8 – UNIT PRICES**

Unit Prices contained in the bid for additions to or deductions from estimated quantities and or price are:

- Acceptable and are, therefore, incorporated into the Contract
- Are not acceptable and are not incorporated as part of the Contract
- Not applicable to this Contract

## **ARTICLE 9 – MISCELLANEOUS PROVISIONS**

9.1 Terms used in the Contract that are defined in the General Conditions of the Contract have the meanings designated in those General Conditions.

9.2 In addition to any other guarantees or warranties, the Contractor covenants and agrees, after acceptance of the Work performed under this Contract, to remedy without cost to the Department, any such defect, provided said defects in the judgment of the Department, or

its successors having jurisdiction in the premises, are caused by defective or inferior materials, equipment or workmanship. If the corrective Work is not completed within thirty (30) days after notification by the Department to the Contractor, the Department may do the Work and submit those costs to the Surety Company for reimbursement.

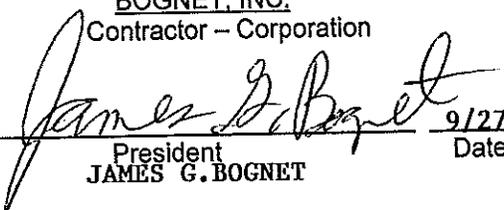
- 9.3 The Contract Bonds given by the Contractor conditioned upon the faithful performance of the Contract and for the payment of labor, material, equipment rental and public utility service claims are attached to this contract and are made a part of it.
- 9.4 No third party acquires any rights against the Department under this Contract.
- 9.5 The Contractor agrees to abide by and be bound by the Laws of Pennsylvania relating to and regulating the hours and conditions of employment.
- 9.6 Any claimant who has performed labor or furnished material in the prosecution of the Work has a right of action to recover the cost thereof from the Contractor and/or the surety on the Bond given to secure the payment as set forth in 62 Pa. C. S. §903(d), also known as the Commonwealth Procurement Code. For those who do not have a contract directly with the Contractor, this right of action may not be exercised unless the Contractor receives written notification of the claim within ninety (90) days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which it claims payment. The Contractor shall include in all of its subcontracts or supply contracts a provision requiring that its subcontractors and suppliers notify, in writing, their subcontractors and suppliers of this requirement. It is hereby agreed that no third party rights arise against the Department for any reason under this Section, and Contractor hereby agrees to so inform all subcontractors in writing.

**ARTICLE 10 – CONTRACT COMPLIANCE REGULATIONS**

Refer to the appropriate paragraph of the 2010 General Conditions of Contract (which are made a part of this Contract by incorporation by reference as if fully set forth herein), which prohibits discrimination in hiring or employment opportunities. Also made a part of this Contract by incorporation by reference are all State and Federal Laws prohibiting discrimination in hiring or employment opportunities. The contract documents also list applicable statutory provisions which are incorporated by reference into this contract as if set forth fully herein.

**IN WITNESS WHEREOF**, the Department of General Services and the Contractor have caused this contract to be executed the day and year above written.

  
ASST. ~~Secretary of Treasurer~~  
JOHN T. TRUSKY  
(Corporate Seal)

**BOGNET, INC.**  
Contractor – Corporation  
By:   
President  
JAMES G. BOGNET  
Date 9/27/11

COMMONWEALTH OF PENNSYLVANIA  
ACTING THROUGH THE DEPARTMENT  
OF GENERAL SERVICES

APPROVED ELECTRONICALLY  
Secretary of General Services

\_\_\_\_\_  
Witness

APPROVED AS TO LEGALITY AND FORM:

APPROVED ELECTRONICALLY  
Office of General Counsel

APPROVED ELECTRONICALLY  
Office of Attorney General

I hereby certify that funds in the amount of \$ 122,000.00  
are available under Appropriation Symbol \_\_\_\_\_

APPROVED ELECTRONICALLY  
Comptroller Date

**APPROVED ELECTRONICALLY  
VIA SAP**

BOND NO. PRF762560700

### CONTRACT BOND

KNOW ALL PERSONS BY THESE PRESENTS, That we the undersigned  
BOGNET, INC.

ROUTE 924-HUMBOLDT, P. O. BOX 206, HAZLETON, PA 18201

as Principal

and

Fidelity and Deposit Company of Maryland

3910 Keswick Road, Baltimore, MD 21211

a

Corporation organized and existing under the Laws of the State of  
Maryland and authorized to transact business in Pennsylvania,

as Surety

are held and firmly bound unto the Department of General Services as hereinafter set forth, in the full and just several sums of

(A) One Hundred Twenty-Two Thousand and -----00/100 Dollars (\$122,000.00)  
for faithful performance of the Contract as designated in Paragraph "A" herein; and

(B) One Hundred Twenty-Two Thousand and -----00/100 Dollars (\$122,000.00)  
for payment for labor, material equipment rental and public utility services as designated  
in Paragraph "B".

Sealed with our respective seals and date this 27th day of September, 2011.

WHEREAS, the above Principal has entered into a Contract with the Department of General Services dated the 12th day of October, 2011 for Contract No. D.G.S. 961-16.1 Phase 2, for the General Construction, Construction of Unheated Storage Building, PA National Guard Armory – Reading, 2601 River Road, Reading, Berks County, Pennsylvania

upon certain terms and conditions in said Contract more particularly mentioned; and

WHEREAS, it is one of the Conditions of the Award of the Department of General Services pursuant to which said Contract is about to be entered into, that these presents be executed;

NOW, THEREFORE, the joint and several conditions of this obligation are such:

A. That, if the above Principal as Contractor shall well and faithfully do and perform the things agreed by it to be done and performed according to the terms of said Contract and General Conditions, including the plans and specifications therein referred to and made part thereof, and such alterations as may be made in said plans and specifications as therein provided and which are hereby made part of this Bond the same as though they were fully set forth herein, and shall indemnify and save harmless the Department of General Services and all of its officers, agents and employees from any expense incurred through the failure of said Contractor to complete the Work as specified and for any damages growing out of the manner of performance of said Contract by said Contractor or its Subcontractors, or its or their agents or servants, including, but not limited to, patent trademark and copyright infringements, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

B. That, if the above Principal shall and will promptly pay or cause to be paid all sums of money which may be due by the Principal or any of its Subcontractors to any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the Work, whether or not the said material or labor entered into and become component parts of the Work or improvements contemplated, and for rental of equipment used, and services rendered by public utilities in, or in connection with, the prosecution of such Work, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

C. It is further agreed that any alterations which may be made in the terms of the Contract or in the Work to be done or materials to be furnished or labor to be supplied or performed, or equipment to be rented, or public utility services to be rendered, or the giving by the Department of General Services of any Extension of Time for the performance of the Contract, or the reduction of the retained percentage as permitted by the Contract, or any other forbearance

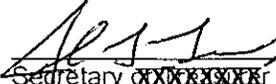
on the part of either the Department of General Services or the Principal to the other, shall not in any way release the Principal and the surety or sureties or either or any of them, their heirs, executors, administrators, successors or assigns, from their liability hereunder; notice to the surety or sureties of any such alterations, extension or forbearance being hereby waived.

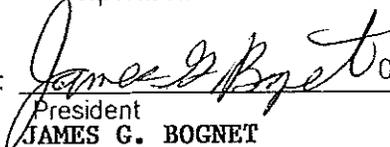
D. The Principal and Surety hereby jointly and severally agree with the Obligee herein that every person, co-partnership, association or corporation which, whether as subcontractor or as a person otherwise entitled to the benefits of this Bond, has furnished material or supplied or performed labor or rented equipment used in the prosecution of the Work as above provided and any public utility, which has rendered services, in, or in connection with, the prosecution of such Work, and, which has not been paid in full therefore, may sue in assumpsit on this Bond in his, their, or its name and prosecute the same to final judgment for such sum or sums as may be justly due him, them, or its, and have execution thereon; provided, however, that the Department of General Services shall not be liable for the payment of any costs or expenses of such suit to a third party under any theory of law or equity.

E. Recovery by any persons, co-partnership, association or corporation hereunder is subject to the provisions of the Act of May 15, 1998, P.L. 358, No. 57, 62 Pa.C.S §§101-4509, as amended, which Act is incorporated herein and made a part hereof, as fully and completely as though its provisions were fully and at length herein recited, except that, where said Act refers to the Commonwealth of Pennsylvania or a Department thereof, it is deemed to refer to the Department of General Services.

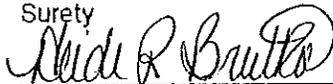
[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the said Principal and Surety have duly executed this Bond under seal the day and year above written.

 09/27/11  
ASST. Secretary ~~XXXXXXXXXX~~ Date  
JOHN F. TRUSKY  
(Corporate Seal)

BOGNET, INC.  
Corporation  
By:  09/27/11  
President Date  
JAMES G. BOGNET

\_\_\_\_\_  
PA Resident Agent Date

Fidelity and Deposit Company of Maryland  
Surety Date  
 09/27/11  
Attorney-in-Fact Date  
Heidi R. Brutko

APPROVED AS TO LEGALITY AND FORM:

APPROVED ELECTRONICALLY  
Office of Chief Counsel

APPROVED ELECTRONICALLY  
Office of Attorney General

**APPROVED ELECTRONICALLY  
VIA SAP**

**Power of Attorney  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof does hereby nominate, constitute and appoint **Kitty A. CASSELL, Brent D. HEADLEY, Timothy C. HOAGLAND, Heidi R. BRUTKO, Joseph A. KOTULA and Jennifer Ann YOUNG**, all of Mechanicsburg, Pennsylvania, EACH in his or her lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Kitty A. CASSELL, Brent D. HEADLEY, Timothy C. HOAGLAND, Heidi R. BRUTKO, Jamie J. WERNER, Joseph A. KOTULA, dated December 14, 2009.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 27th day of April, A.D. 2010.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Gregory E. Murray*

*Gregory E. Murray Assistant Secretary*

By:

*David S. Hewett*

*David S. Hewett*

*Vice President*

State of Maryland }  
City of Baltimore } ss:

On this 27th day of April, A.D. 2010, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Constance A. Dunn*

*Constance A. Dunn*

*Notary Public*

*My Commission Expires: July 14, 2015*

**EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

**CERTIFICATE**

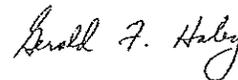
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 27th day of September, 2011.



*Assistant Secretary*