

CONTRACT NO. DGS 415-38.2

COLLECTIVE NO: CN00029071

STANDARD FORM OF AGREEMENT

BETWEEN THE DEPARTMENT AND CONTRACTOR

This AGREEMENT, Executed this \_\_\_\_\_ day of \_\_\_\_\_ 2008,  
by and between the Department of General Services, created by Act  
No. 45 of JULY 22, 1975, hereinafter called "DEPARTMENT" and  
FREY LUTZ CORP. of 1195 IVY DRIVE, LANCASTER, PA 17601 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 this Agreement, the  
Notice to Bidders, the Instructions to Bidders, the Bid Form, the  
Contract Bonds, the Conditions of the Contract (General, Special,  
Supplementary and other Conditions), the drawings of all the  
Contracts, the specifications of all the Contracts, all Bulletins  
and addenda issued prior to execution of this Agreement, all  
change orders, and the Administrative Procedures of the Bureau of  
Construction. These form the Contract, and are as fully a part  
of the Contract as if attached to this Agreement or repeated  
herein.

**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. 415-38.2, Renovation of Student Center, 13 Cottages, Frey Gymnasium, Warehouse and Maintenance Building, Scotland School for Veterans' Children, Scotland, Franklin County, Pennsylvania

**ARTICLE 3 - PROFESSIONAL**

The Professional for this project is N. John Cunuzolo Associates, Inc., 360 Lincoln Avenue, Pittsburgh, PA 15202

**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 no later than ten (10) days after the Initial Job Conference and shall complete all Contract work to the satisfaction and approval of the Department, on or before 405 calendar days from the Date of Initial Job Conference. Contractor further agrees that time is of the essence of this Contract, and that, if it 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 Five Hundred and-----00/100 Dollars (\$500.00) per day for each and every calendar day after the 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 contract modification or change order, as provided in the General Conditions of the Contract, the contract sum of One Million, Five Hundred Thirty-Four Thousand and-----00/100 Dollars (\$1,534,000.00) Base Bid No. 4. Payment will be made as set forth in the General Conditions of the Contract. Deductions from or additions to said sum will be made as set forth in the 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, as provided in the General Conditions of the Contract.

**ARTICLE 7 - FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract sum, will be paid by the Department to the Contractor within thirty (30) days after Final Inspection of the Work, if the Contract has been fully performed, and a Final

Application for Payment has been submitted, as provided in the General Conditions of the Contract.

**ARTICLE 8 - UNIT PRICES**

NOT APPLICABLE

**ARTICLE 9 - MISCELLANEOUS PROVISIONS**

9.1 Terms used in the Agreement which are defined in the Conditions of the Contract have the meanings designated in those 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. No third party shall acquire any rights against the Department under the Contract Documents.

9.4 The Contractor agrees to abide by and be bound by the Laws of Pennsylvania relating to and regulating the hours and conditions of employment.

9.5 Any person, co-partnership, association or corporation furnishing labor, material, equipment or renting equipment or rendering public utility services in connection with performance of this Contract has a right of action to recover the cost thereof from the Contractor and the surety on the Bond given to secure the payment of such labor, material, equipment or equipment rental and services rendered by public utility as though such person or corporation had been named as obligee in such Bond. For those who do not have a contract directly with the contractor, this right of action may not be exercised unless the contractor is notified of the claim within ninety days from the last performance of labor or provision of materials. 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

See Paragraph 15.33 of the 1999 General Conditions of Contract. Also made a part of this Contract by incorporation by reference, and as if fully set forth herein, are all State and Federal Laws prohibiting discrimination in hiring or employment opportunities.

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

Witness: COMMONWEALTH OF PENNSYLVANIA ACTING THROUGH THE DEPARTMENT OF GENERAL SERVICES

(Date) Secretary of General Services (Date)

CONTRACT NO. D.G.S. 415-38.2

WBS ELEMENT: C-0415-0038-000-000-K-2

Attest: FREY LUTZ CORP. Corporation

Asst. Secretary Victor C. Vascellaro 12/15/08 Date

By: Scott P. Rhoads 12/15/08 Date Vice President Scott P. Rhoads

Approved as to legality and Form

Office of General Counsel Date Office of Attorney General Date

I hereby certify that funds in The amount of \$1,534,000.00 are available under Appropriation Symbol ME

Comptroller (Date)

APPROVED ELECTRONICALLY VIA SAP

CONTRACT BOND

Bond No. 019027979

KNOW ALL PERSONS BY THESE PRESENTS, That we the undersigned

FREY LUTZ CORP.

1195 IVY DRIVE, LANCASTER, PA 17601

as Principal and LIBERTY MUTUAL INSURANCE COMPANY

(Surety Company)

512 Township Line Road, 3 Valley Square, Suite 350, Blue Bell, PA 19422

(Address)

a Corporation organized and existing under the Laws of the State of Massachusetts 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 Million, Five Hundred Thirty-Four Thousand and -----00/100 Dollars (\$1,534,000.00) Base Bid No. 4, for faithful performance of the Contract as designated in Paragraph "A"; and

(B) One Million, Five Hundred Thirty-Four Thousand and -----00/100 Dollars (\$1,534,000.00) Base Bid No. 4, for payment for labor, material equipment rental and public utility services as designated in Paragraph "B".

Sealed with our respective seals and dates this 16th day of December, 2008

WHEREAS, the above Principal has entered into a Contract with the Department of General Services dated the 29th day of December, 2008 for Contract No. D.G.S. 415-38.2, HVAC Construction, Renovation of Student Center, 13 Cottages, Frey Gymnasium, Warehouse and Maintenance Building, Scotland School for Veterans' Children, Scotland, Franklin 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 therefor, 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 of 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. Sections 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.



THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY  
BOSTON, MASSACHUSETTS  
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint

DAVID R. BRADBURY, ANTHONY M. MACINANTI, LUELLA G. KAUFFMAN, KIMBERLY A. HORNING, TIMOTHY C. HOAGLAND, BRENT D. HEADLEY, KITTY A. CASSELL, JAMIE J. WERNER, LYDIA A. MANTLE, R. SCOTT MILLER, HEIDI R. BRUTKO, STEPHANIE L. BANKERT, ALL OF THE CITY OF LANCASTER, STATE OF PENNSYLVANIA.....

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding FIFTY MILLION AND 00/100\*\*\*\*\* DOLLARS (\$ 50,000,000.00\*\*\*\*\*) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such Instruments and to attach thereto the seal of the Company. When so executed such Instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 18th day of November 2008.

LIBERTY MUTUAL INSURANCE COMPANY

By Garnet W. Elliott  
Garnet W. Elliott, Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 18th day of November, 2008, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Plymouth Twp., Montgomery County  
My Commission Expires Mar. 28, 2009  
Member, Pennsylvania Association of Notaries

By Teresa Pastella  
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, 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 16th day of December, 2008



By David M. Carey  
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.