

**AGREEMENT**  
**University of Connecticut**  
**And**  
**Town of Mansfield**

THIS AGREEMENT (this "Agreement") is made and entered into as of the 26<sup>th</sup> day of November, 2013, by and between THE UNIVERSITY OF CONNECTICUT, a constituent unit of the state system of public higher education ("UConn"), and the TOWN OF MANSFIELD, a municipal corporation ("Mansfield"). UConn and Mansfield are each sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

**WHEREAS**, Mansfield and UConn mutually wish to ensure the orderly development, construction and maintenance of the new Town Square to be located in Storrs Center (hereinafter referred to as the "Project"); and

**WHEREAS**, the Parties have agreed upon a concept plan for the Project, which is attached hereto as Exhibit A and incorporated herein; and

**WHEREAS**, Mansfield will control the execution of the Project, which includes its design and completion schedule; and

**WHEREAS**, UConn intends to make a financial contribution to the Project in exchange for approval of the design and completion schedule of the Project and exclusive use rights in the Town Square; and

**WHEREAS**, the Parties wish to memorialize in this Agreement their respective contributions to the Project.

**NOW THEREFORE**, for the promises and considerations set forth herein, Mansfield and UConn do hereby agree as follows:

**1. Purpose; Term and Termination.**

- (a) The purpose of this Agreement is to set forth the obligations of the Parties hereto.
- (b) Subject to the provisions of Paragraph 4 with respect to the License (as hereinafter defined), the term of this Agreement shall commence on the date upon which this Agreement is approved as to form by the Office of the Attorney General. Unless extended by mutual agreement of the parties, the parties' obligations under Paragraphs 2 and 3 of this Agreement shall terminate on the earlier of completion of the punch-list for the Project or on September 1, 2014. The term of the License granted under Paragraph 4 shall

be as set forth in Paragraph 4.

**2. Mansfield Agrees To:**

- (a) Substantially complete the design of the Project by approximately November 25, 2013 (in accordance with the proposed Project schedule set forth in Exhibit B attached hereto and incorporated herein);
- (b) Provide UConn with a five (5) business day period to review and comment upon final Project design documents;
- (c) Hire (or require others to hire) any necessary contractors and to begin construction of the Project prior to December 1, 2013;
- (d) Complete the following primary components of the Project by approximately December 24, 2013:
  - i. Fieldstone seat walls;
  - ii. Raised planting beds on North and East edges;
  - iii. Foundation and steps of performance pavilion;
  - iv. Foundation for shade structure;
  - v. Eighty-five percent of aggregate base material; and
  - vi. Underground utility lines and conduits;
- (e) Complete the following components of the Project by May 10, 2014:
  - i. Green circular area and border;
  - ii. Pavers;
  - iii. Sidewalks;
  - iv. Pavilion floor;
  - v. Plantings;
  - vi. Light pylons;
  - vii. Fences, railings, and benches; and
  - viii. Internal trees and tree grates;
- (f) Complete the remaining components of the Project (other than the artwork, the above-ground elements of the shade structure and shade structure lighting, and the pavilion roof) by approximately August 31, 2014;
- (g) Contribute the value of \$250,000 towards the Project, using a combination of grant funding and in-kind services;
- (h) Administer any federal or state grant funding in compliance with appropriate federal or state regulations; and
- (i) Support any fundraising effort sponsored by the Mansfield Downtown Partnership, Inc. ("MDP") or other appropriate entity to raise funds for the completion of the Project.

**3. UConn Agrees To:**

- (a) Contribute a sum of \$250,000 towards the Project, by depositing such amount in cash with Mansfield not later than December 10, 2013;
- (b) Support any fundraising effort sponsored by the MDP or other appropriate entity to raise funds for the completion of the Project; and
- (c) Review and comment on the design of the Project within five (5) business

days of being furnished final Project design documents.

4. **License.** Upon the Project's availability for use on or about May 1, 2014, UConn shall have a license (the "License") to utilize the completed Town Square (other than the Kiosk Areas (as hereinafter defined)) as a venue for University-organized or sponsored non-commercial performances, gatherings and other events, such as, but not limited to, musical or dramatic performances and other artistic presentations, subject to the following terms and conditions and the remaining provisions of this Agreement:
  - (a) Such utilization shall not involve any use that (i) is inconsistent with any exclusive license for the operation of free-standing, portable, retail kiosks now or hereafter granted to Leyland Storrs, LLC, its successors or assigns (such licensee, the "Kiosk Licensee") as provided in that certain Development Agreement dated as of February 15, 2011 and recorded in Volume 707, Page 198 of the Mansfield Land Records, as supplemented by that certain Supplement to Development Agreement dated as of May 26, 2011 and recorded in Volume 7078, Page 311 of the Mansfield Land Records, as amended by that certain Amendment to Development Agreement dated as of October 1, 2011 and recorded in Volume 715, Page 397 of the Mansfield Land Records (as it may be amended from time to time, the "Development Agreement"), (ii) is inconsistent with the intended purpose of the Town Square for pedestrian travel and as a central public gathering space for Storrs Center and the Town of Mansfield, (iii) materially adversely obstructs visibility of or access to retail portions of Phases 1A and 1B of Storrs Center, (iv) limits or abridges the First Amendment rights of the members of the public with respect to the Town Square, (v) adversely affects or unreasonably interferes with or disturbs any use, occupancy or enjoyment of Storrs Center, or constitutes a nuisance, presents a health or safety risk, or violates any applicable law, ordinance or regulation, (vi) involves any hazardous or inherently dangerous activity, or the use, storage or disposal of any hazardous materials or substances.
  - (b) The Parties intend that the License shall permit UConn to utilize the completed Town Square (other than the Kiosk Areas) on up to twenty-four (24) calendar days in each 12-month period beginning on August 1 and ending on July 31 during the term of the License, subject to designation of such dates therefor as shall be set forth in an events schedule to be developed annually by Mansfield, MDP or its respective successor (the "Organizer") after receiving input from Mansfield, UConn and the Kiosk Licensee, it being understood and agreed that the Kiosk Licensee and, if not otherwise waived in writing by Leyland Storrs LLC, its successor or assign, all Storrs Center commercial tenants, shall be provided with a reasonable opportunity to comment on the proposed annual events schedule before its finalization and adoption. Once a date has been reserved for UConn for a designated event in the adopted annual events schedule, UConn shall have the exclusive right to use the Town Square (other than the Kiosk Areas) on such date for such event, subject to the Kiosk Licensee's rights for operating free-standing, portable, retail kiosks within the

Town Square; provided, however, that nothing herein shall prevent UConn from agreeing to relinquish such date, in its sole discretion, in order to accommodate a subsequent competing request made to the Organizer for the originally reserved date, in which case UConn shall be entitled to a substitute date which is not otherwise reserved on the adopted schedule and which is mutually acceptable to UConn and the Organizer.

- (c) Nothing herein shall prevent UConn from requesting the non-exclusive use of the Town Square on additional dates in any annual period on at least sixty (60) days' notice, subject to the terms and conditions set forth herein, dates already reserved by others on the adopted annual schedule and the Organizer's operating policy for the Town Square. If any such additional date is approved by the Organizer (after soliciting the same input as described above with respect to the annual events schedule), it shall be added to the adopted events schedule, and subject to all of the terms and conditions hereof with respect to UConn's use of the Town Square except that UConn's use shall not be exclusive on such additional date.
- (d) During the term of this License, Mansfield shall maintain the Town Square in the same manner that the Town is maintaining the other public portions of Storrs Center.
- (e) UConn shall carry the insurance designated on Exhibit D attached hereto during the term of this License, and provide certificates of insurance evidencing such coverage to Mansfield.
- (f) UConn shall comply (and shall cause its employees, contractors, agents and invitees to comply) with Sections 11.03 and 21.01 of the Development Agreement and all applicable laws, regulations, ordinances, permits, and policies now or hereafter governing the use or operation of the Town Square, and shall be liable for any acts or omissions thereof. UConn shall be responsible for obtaining all applicable governmental permits and approvals relating to any use of the Town Square under the License.
- (g) Mansfield does not make any representation regarding the condition of the Town Square or any improvement thereon or the fitness thereof for any purpose whatsoever, and, subject to the Town's obligations under Subparagraph 4(d), UConn accepts the Town Square in "AS IS, WHERE IS" condition at the time of each utilization thereof under the License.
- (h) It is not the intention of the parties to create between them the relationship of landlord and tenant or to confer any rights or obligations upon either UConn or Mansfield as would amount in law to a landlord-tenant relationship. This License does not create in UConn any interest in the Town Square or in any other property of Mansfield other than the usage rights granted by this Agreement. This Agreement is intended solely to create a bare privilege on the part of UConn personal to UConn to use the Town Square as described in this Agreement.
- (i) Provided that UConn performs its obligations under Paragraph 3, the term of this License shall commence on May 1, 2014 (or such earlier date following completion of the Town Square as the first annual event schedule is adopted by the Organizer) and shall expire upon the tenth anniversary of the July 31

next succeeding such commencement date; provided, however, that the term shall be automatically extended for successive one-year periods unless either Party notifies the other Party in writing at least thirty (30) days prior to the then applicable expiration date.

- (j) As used herein, "Kiosk Areas" means those areas from time to time approved by Mansfield for the location of free-standing, portable, retail kiosks operated by or on behalf of the Kiosk Licensee within the Town Square pursuant to the exclusive license now or hereafter granted to the Kiosk Licensee as provided in the Development Agreement, together with an area surrounding each such individual kiosk as may be reasonably necessary for the proper operation thereof. Any exclusive rights granted to UConn hereunder shall also be subject to such non-exclusive rights of access through the Town Square to and from such Kiosk Areas and the public streets surrounding the Town Square.
- (k) UConn is responsible for all set-up, breakdown and cleaning in connection with its use of the Town Square. Without limiting the generality of the foregoing, UConn shall promptly following the conclusion of any event, remove all food, beverages, equipment and supplies (rented or otherwise) from the Town Square, remove and properly dispose of all trash from the Town Square and return the Town Square (or, if UConn's use thereof for such event is non-exclusive, the portion so utilized by UConn) to substantially the same condition as existed prior to such event. UConn shall be liable for any damage to the Town Square caused by the operation, installation or removal of personal property and equipment brought on the Town Square by UConn, its agents, contractors, employees or invitees with respect to the event, or any use of the Town Square in connection with the License. UConn shall promptly reimburse Mansfield on demand for the costs and expenses of any cleaning, repairs or replacements incurred by Mansfield resulting from any such damage or from the failure of UConn to properly perform its cleaning or repair obligations.

5. **Delays.** The parties' respective obligations hereunder (other than the payment of money) are subject to reasonable delays for force majeure. The Parties also acknowledge that the dates set forth in Paragraph 2 and the proposed Project schedule attached hereto as Exhibit B are target dates only and are dependent upon, without limitation, the efforts and contributions (monetary and otherwise) of others (including UConn), the weather and completion of design of the Project; provided, however, Mansfield shall use commercially reasonable efforts to complete the Project by August 31, 2014.
6. **Default.** If at any time either Party shall default in the performance or observance of any of the terms, covenants, conditions or agreements of this Agreement, and such default shall not be cured within thirty (30) days after delivery of notice thereof from any non-defaulting Party to the defaulting Party (or if such default is capable of cure but not reasonably capable of cure within such thirty (30) day period, if the defaulting Party fails to commence a cure within such thirty (30) day period and diligently and continuously prosecute such cure to completion within a reasonable time period), then

the non-defaulting Party shall be entitled to (i) submit such matter to mediation as provided in Paragraph 9, (ii) terminate this Agreement upon written notice to the other Party, or (iii) pursue such other remedy as may be available at law or in equity; provided, however, that if such default involves an emergency (i.e., the possibility of risk of injury to person or property), or performance of such obligation is necessary to prevent or relieve an emergency, then the notice required to be given hereunder need only be such reasonable notice, if any, as is warranted by the nature of the specific condition involved. Notwithstanding anything to the contrary contained herein, each Party hereby waives consequential damages, punitive damages, treble or other multiple damages, and damages for lost opportunity or lost profits for claims, disputes, or other matters arising out of or relating to this Agreement.

7. **Compliance with Laws.** To the extent applicable to this Agreement, Mansfield acknowledges and agrees that it shall comply with and be subject to the laws, rules, regulations and executive orders set forth in Exhibit C attached hereto, which Exhibit C is incorporated herein by reference and made an integral part of this Agreement.
8. **Cooperative Effort.** The Parties agree to work cooperatively to accomplish the objectives described in this Agreement.
9. **Mediation.** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to seeking other recourse. Mansfield and UConn shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the Parties mutually agree otherwise, shall take place in the Town of Mansfield, Connecticut and shall be administered by a mutually agreeable mediator in accordance with the Commercial Mediation Procedures of the American Arbitration Association ("AAA") in effect on the date of this Agreement; provided, that such mediation is not required to be conducted under the auspices of the AAA unless required by either Party. A request for mediation shall be made in writing, delivered to the other Party to the Agreement. The submission of any claim, dispute or other matter to mediation shall not constitute a waiver of any rights of either Party under applicable law.
10. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Connecticut, without regard to its principles of conflicts of laws.
11. **Entire Agreement.** This Agreement, together with the exhibits hereto, constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof and supersedes all prior discussions and agreements, oral or written, express or implied, relating to the subject matter hereof. Any amendments to this Agreement must be in writing and executed by authorized representatives of the Parties and approved by the Office of the Attorney General. The performance by any Party of its obligations under this Agreement shall not operate in any way as a waiver of non-compliance or breach by the other Party.

12. **Execution**. This Agreement may be executed in one or more counterparts each of which shall constitute an original but which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile, portable document format (“**PDF**”) or other electronic means shall be as effective as delivery of a manually executed counterpart of this Agreement. The signature of any Party on this Agreement by telecopier, facsimile, PDF or other electronic means is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any Party, any telecopier, facsimile or other electronic signature will be re-executed in original form by the Party which executed the telecopier, facsimile, PDF or other electronic signature. No Party may raise the use of a telecopier, facsimile machine, PDF or other electronic means, or the fact that any signature was transmitted through the use of a telecopier, facsimile machine, PDF or other electronic means, as a defense to the enforcement of this Agreement.
13. **Benefit; Binding**. This Agreement shall inure to the benefit of, and shall be binding upon UConn, but may not be assigned by UConn; any such assignment shall be null and void. This Agreement shall inure to the benefit of, and shall be binding upon Mansfield, its successors and assigns, including, without limitation, any corporation or other business organization with which Mansfield may merge or consolidate or to which it may transfer substantially all of its assets or otherwise enter into an acquisition or reorganization transaction.
14. **Approval of the Office of Attorney General**. This Agreement shall not be binding on either party unless and until approved as to form by the Office of the Attorney General.
15. **Budget Shortfall**. The Parties acknowledge that Mansfield is entering into separate contribution agreements with each of Leyland Storrs, LLC, EDR Storrs LLC and MDP, whereby each of Leyland Storrs, LLC and EDR Storrs LLC will agree to contribute cash and/or contracts having an aggregate value of \$125,000 apiece, and MDP will agree to contribute the sum of \$100,000, towards the development and construction of the Project. Mansfield, EDR Storrs LLC and Leyland Storrs, LLC have agreed that \$40,000 of the Developer Party Infrastructure Contribution (as defined in the Development Agreement) has been allocated towards the Project. The anticipated budget for the Project, based on the Concept Plan, exceeds the \$890,000 to be contributed by UConn, EDR Storrs LLC, Leyland Storrs, LLC, Mansfield and MDP in cash and in-kind services; therefore the Parties agree that the Project to be funded with such contributions will not include the artwork, the above-ground elements of the shade structure and shade structure lighting, or the entire cost of the pavilion roof. If, however, MDP’s further fundraising efforts result in contributions to Mansfield that are sufficient to cover the cost of design, construction, acquisition and installation of such items (after deduction for payment of any actual costs in excess of budgeted costs for the remainder of the Project), Mansfield will use such funds for such purposes and/or for other costs approved by Mansfield with respect to the development and/or operation of the Town Square.

16. **Notices.** All notices and other communications shall be deemed to have been duly given and received, whether or not actually received, on (a) the date of receipt if delivered personally, (b) two (2) calendar days after the date of posting if transmitted by certified mail, return receipt requested, or (c) one (1) business day after pick-up if transmitted by nationally recognized overnight courier service, whichever shall first occur, in each case to the address of the Party set forth below. A notice or other communication not given as herein provided shall be deemed given if and when such notice or communication and any specified copies are actually received in writing by the party and all other persons to whom they are required to be given. Any Party hereto may change its address for purposes hereof by notice given to the other Party in accordance with the provisions of this Paragraph 16.

If to Mansfield:

Town of Mansfield  
Audrey P. Beck Municipal Building  
4 South Eagleville Road  
Mansfield, Connecticut 06268  
Attention: Town Manager

If to UConn:

University of Connecticut  
Office of the Executive Vice President for  
Administration & Chief Financial Officer  
352 Mansfield Road, Unit 2048  
Storrs, CT 06269-2048

With a copy to:

University of Connecticut  
Office of the General Counsel  
343 Mansfield Road, Unit 1177  
Storrs, CT 06269-1177

[remainder of page intentionally left blank; signature page follows]

[Signature Page to Agreement]

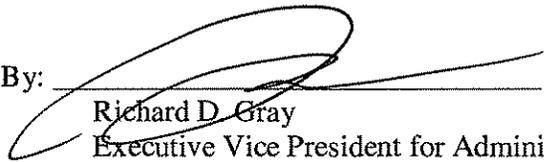
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**THE TOWN OF MANSFIELD**

By:   
Matthew W. Hart  
Town Manager

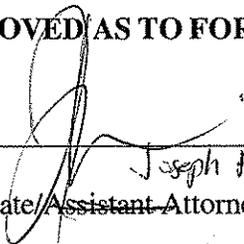
Date: 11/26/2013

**THE UNIVERSITY OF CONNECTICUT**

By:   
Richard D. Gray  
Executive Vice President for Administration  
and Chief Financial Officer

Date: 11/27/2013

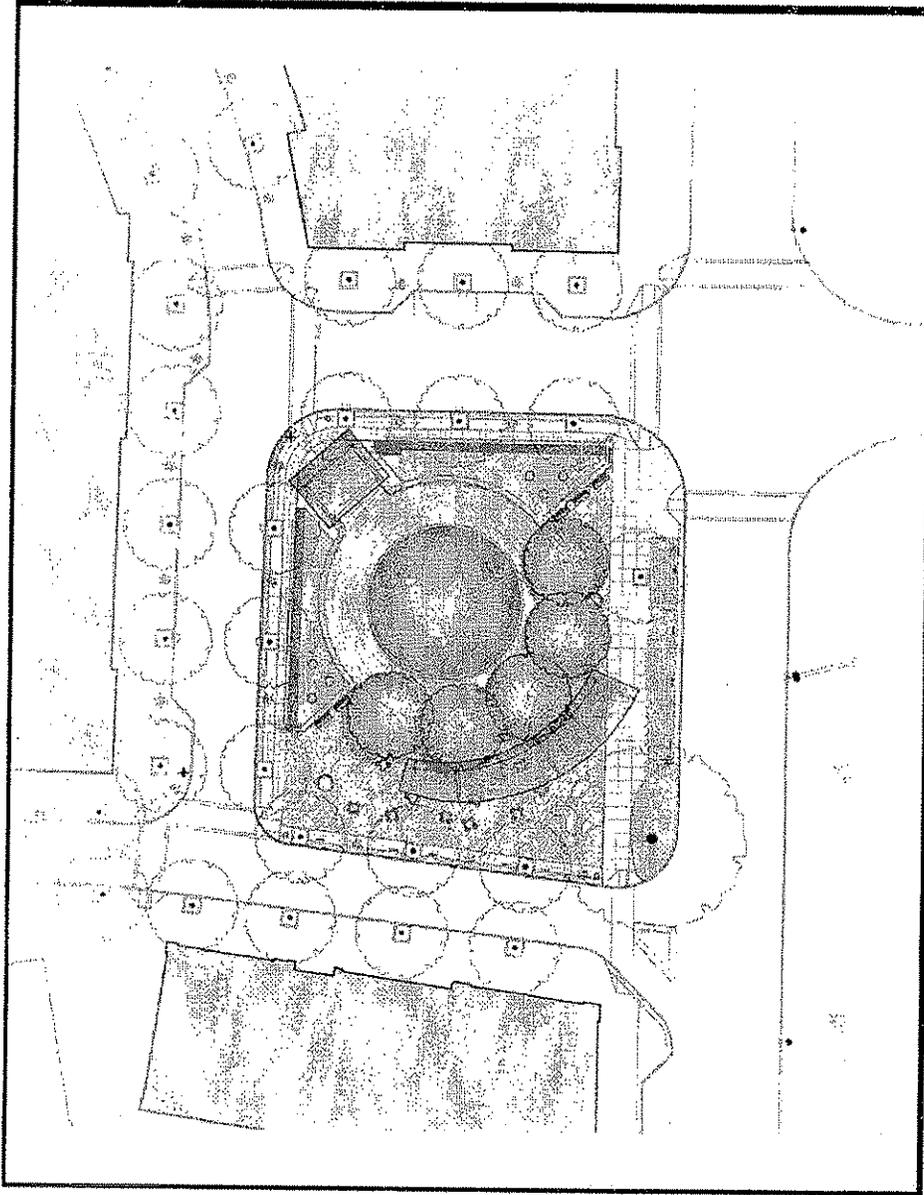
**APPROVED AS TO FORM:**

  
Joseph Rubin  
Associate/Assistant Attorney General

Date: 12/3/13

EXHIBIT A

Concept Plan



## EXHIBIT B

### Proposed Project Schedule

Storrs Center Town Square  
Proposed Project Schedule  
(11/19/13)

<u>Project Element/Milestone</u>	<u>Completion Date</u>
Initial Design Plans (K-F)	November 25, 2013
Landscaping contract approved/signed	November 25, 2013
Concrete foundation work (Pavilion and shade structure)	December 24, 2013
Pavilion foundation and steps	December 24, 2013
Construction of raised planting beds	December 24, 2013
Construction of Stone Walls	December 24, 2013
Place Aggregate Base	December 24, 2013
Construction of Green Circle	May 10, 2014
Placing pavers around green circle & throughout the square	May 10, 2014
Planting of internal trees	May 10, 2014
Planting of raised planting beds	May 10, 2014
Construction of edge sidewalks	May 10, 2014
Construction of fences, railings, and benches	May 10, 2014
Construction of Pavilion/Stage roof	August 31, 2014 (if funds permit)
Construction of Shade Structure	August 31, 2014 (if funds permit)

## EXHIBIT C

1. Claims Against the State. Mansfield agrees that the sole and exclusive means for the presentation of any claim against the State of Connecticut or UConn arising from or in connection with this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and Mansfield further agrees not to initiate any legal proceedings in any state or federal court in addition to, or in lieu of, said Chapter 53 proceedings.
2. State Executive Orders. This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Agreement as if they had been fully set forth in it. At Mansfield's request, UConn shall provide a copy of these orders to Mansfield. This Agreement may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions.
3. Sovereign Immunity. The Parties acknowledge and agree that nothing in this Agreement shall be construed as a waiver by the State of Connecticut or UConn of any rights or defenses of sovereign immunity, which it may have had, now has, or will have with respect to all matters arising out of this Agreement.
4. Statutory Authority. Connecticut General Statutes §§ 4a-52a, 10a-104, 10a-108, 10a-109d (a)(5) and/or 10a-151b, provide UConn with authority to enter into contracts in the pursuit of its mission.
5. Inconsistency. The Parties agree that should any provision of this Exhibit C conflict with a provision of the Agreement, the provision of this Exhibit C shall prevail.
6. Insurance. Mansfield agrees that while performing all services specified in this Agreement, its contractors will carry sufficient insurance (liability and/or other) as applicable according to the nature of the service to be performed so as to "save harmless" the State of Connecticut from any insurable cause whatsoever. If requested, certificates of such insurance will be filed with University prior to the performance of such services.

## **EXHIBIT D**

### **Insurance**

**Workers' Compensation**—Workers' Compensation insurance as required by law in applicable statutory limits

**Employers' Liability Insurance** - not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease – each employee.

**Commercial General Liability Insurance** - Commercial General Liability Insurance shall be provided by UConn in the following amounts: One Million Dollars (\$1,000,000) each occurrence with a Two Million Dollars (\$2,000,000) annual aggregate.

**Umbrella Excess Liability Insurance** - This policy, in the minimum amount of FIFTEEN MILLION (\$15,000,000.00), shall be written on an umbrella excess basis over the employer's liability, commercial general liability, and commercial general automobile liability coverages described herein.

