



Gilbane Building Company
Trade Contract Agreement
(GBC Form Trade Contract Agreement – 2021)

Agreement # **J09587.000-0007-000**

Made as of **10/10/2022**

Vendor # **SA002**

Description: **BP 21A Fire Suppression**

Between The "Construction Manager" or "Contractor":

Gilbane Building Company
950 Main Avenue Suite 1410 Cleveland, OH 44113 US

And the "Trade Contractor" or "Subcontractor":

S. A. Comunale Co., Inc
2900 Newpark Drive Barberton, OH 44203-1050 US

The Project Name:

KSU Crawford Hall – Ambassador Crawford College of Business and Entrepreneurship
100 Midway Drive Kent, OH 44242 US

The Owner Name:

Kent State University
615 Loop Road Harbourt Hall, Suite 101 Kent, OH 44242-0001 US

The Architect:

The Collaborative Inc.
Rich Pace



ARTICLE 1

THE WORK

1.1 The Trade Contractor and the Construction Manager agree that the labor, services, materials and equipment to be furnished and the work to be performed by the Trade Contractor shall include the following described items (herein the “Work”) in connection with the construction of the Project:

1.1.1 The Trade Contractor shall complete all Fire Suppression, Plumbing and HVAC Work and all related work as required for the construction and completion of Kent State ACCOBE Project Kent, OH, all in accordance with Bid Package BP21A, 22A and 23A, the Drawings and Specifications as prepared by The Collaborative referenced therein, and the Proposal Form. All work shall be in strict accordance with the Bid Package documents and include the following:

General Instructions to Bidders
Bid Bond Form
Invitation to Bid
Sample Trade Contract Agreement(s)
Contract between Construction Manager and Trade Contractor
State of Ohio Subcontract Form
Trade Contract Conditions
Project Quality Plan
Owner Contract Agreement (REDACTED)
A201 or Owner Contract General Conditions
Owner Contract Special Conditions (Russian War)
Economic Inclusion Plan
Gilbane Project Safety Plan
Gilbane Non-Negotiables
GOContractor User Set-up and Learners Guide
Emergency Action Plan
Business Credentialing Service (BCS) Insurance Tracking Procedures
Sample Certificate of Insurance
Standard Performance & Payment Bond Form
Standard Supply Bond
Billing Instructions
Textura-CPM Subcontractor Overview
Partial and Final Waiver Forms
Stored Material Forms
Certified Payroll Instructions
Prevailing Wage Requirements
Tax Exempt Certificate
Project Schedule - Baseline Schedule
Advanced Planning & Scheduling Procedures
Site Logistics, Site Utilization, and/or Phasing Plan(s)
Existing Building / Site Conditions Report
Drawing Log
Specification Log
BIM Standards
Technology Usage - Software Utilization / Technology Requirements
Technology Usage - Subcontractor OAKS-CI
General Scope Items
Bid Package Specific Scope Items
Labor Breakdown Sheet
Project Procurement Log
Waste Management Plan
Bid Package Supplement #1
Bid Package Supplement #2
Bid Package Supplement #3
Bid Package Supplement #4
6.17.22 KSU ACCOBE PreBid RFI Answers #1
6.30.22 KSU ACCOBE PreBid RFI Answers #2
7.08.22 KSU ACCOBE PreBid RFI Answers #3

1.1.2 In addition to the scope of work noted above, the following items shall be INCLUDED:

KSU ACCOBE - Site Logistics Plan PHASE 2 (Updated 7-28-22)
KSU ACCOBE - Subcontractor_Agreement_Form
KSU ACCOBE - SubcontractorEEO_Responsibilities
KSU ACCOBE Tax_Exempt
KSU-18L048_Gilbane-Fully Executed Redacted
21A Fire Suppression Scope Sign- SA Comunale
22A Plumbing Scope Sign- SA Comunale
23A HVAC Scope Sign- SA Comunale



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General Scope Sign - SA Comunale
SA Comunale Labor Rates

1.1.3 Submit Insurance Certificate in accordance with Article 6.3 of this Contract Agreement.

Gilbane Building Company shall be listed as the Certificate Holder. Gilbane Building Company, Kent State University, and The Collaborative as well as any others required by contract are each to be named as Additional Insured.

1.2 The Trade Contractor shall be held accountable for, and the Work also includes but is not limited to, the following: furnish all labor, staff, administration, and supervision; furnish, supply and/or install all equipment, material, supplies, tools, machinery, apparatus, scaffolding, hoisting, transportation, unloading and handling; do all things required to fully complete the Work described above on the Project; all in strict compliance with the requirements, terms and conditions set forth in this Agreement (hereinafter "Agreement"); the Plans, Drawings and Specifications prepared by the Architect/Engineer; and the Contract Documents as defined in this Agreement. (hereinafter included as part of the "Work").

1.3 The Trade Contractor expressly represents and warrants to Construction Manager that Trade Contractor holds special knowledge, training, and experience in such Work, and that Trade Contractor shall provide everything required or necessary to complete such Work to the highest standards of such workmanship in the industry, regardless of whether all items, materials, equipment or requirements are expressed, identified or detailed in this Agreement, the Contract Documents, or in the Plans and Specifications.

1.4 The Trade Contractor represents and warrants to the Construction Manager that, prior to executing this Trade Contract Agreement, Trade Contractor has carefully read and studied the Contract Documents, the Plans, Specifications and the Project Bid Manual and all aspects and conditions involved or affecting the Trade Contractor's Work, and has resolved to Trade Contractor's satisfaction every issue relating to the Work. Trade Contractor further represents and warrants to Construction Manager that Trade Contractor has had adequate time to obtain any written clarifications, interpretations or information related to its Work. The Trade Contractor shall carefully study and compare the Contract Documents and shall at once report to the Construction Manager any error, inconsistency or omission he may discover.

1.5 By executing this Trade Contract Agreement, Trade Contractor represents that there are no substitutions to the requirements of the Contract Documents other than those items that are specifically identified in writing, provided to, and approved in writing by, Construction Manager prior to the full execution of this Trade Contract Agreement.

ARTICLE 2

TIME OF COMMENCEMENT AND COMPLETION

2.1 The Trade Contractor shall proceed with the Work at such time(s) and in such sequences as Construction Manager may direct, including but not limited to additional shifts as necessary and required to comply with the Construction Manager's Schedule, as referenced below, which Schedule may be subject to reasonable adjustment by Construction Manager as working conditions require. The Trade Contractor shall execute the Work with promptness and diligence so as to maintain and to meet the Project milestones, Construction Manager's Schedule or updates thereto, and duration of time for such Work. The Trade Contractor shall be required to and agrees to complete portions and the whole of the Work by the following anticipated dates:

All Milestone dates shall be met on or prior to such dates for Trade Contractor's Work, or portions thereof, as set forth in the Construction Manager's Schedule or updates thereto.

2.2 The Trade Contractor is cautioned that schedules and milestones are subject to review and revision, and in such event, such revisions will be made available for the Trade Contractor's information at the jobsite office of the Construction Manager. It is the sole responsibility of the Trade Contractor to attend job meetings, keep itself informed of any revisions, and conform to any such revisions.

2.3 In the event that the Trade Contractor should fail to maintain the Construction Manager's Schedule, milestones as established above, or the duration of times in the Construction Manager's Schedule, the Construction Manager reserves the right, after forty-eight (48) hours written notice, either by letter or email to the Trade Contractor, to procure the materials, equipment, and labor necessary to proceed with, or to complete the Work, or any portion thereof, and charge the cost, expense and damages thereof to the Trade Contractor, and/or to exercise such other remedies as are available in this Agreement or otherwise under applicable law.

ARTICLE 3

THE CONTRACT SUM

3.1 The Construction Manager agrees to pay the Trade Contractor for the satisfactory performance of the Work the total sum of:

THIRTEEN MILLION SIXTY-FIVE THOUSAND FORTY-THREE DOLLARS 0/100

Contract Amount: \$ 13,065,043.00

Diverse Business participation: \$.00

Contract Agreement breakdown is as follows:

\$1,150,800.00 - Fire Protection Base Bid Amount
-\$140,000.00 – 21A, 22A, 23A Combo Price Discount

\$2,398,000.00 - Plumbing Base Bid Amount
-\$6,657.00 – Deletion of Perimeter Drain Pipe & addition of temporary water for Project site Trailer and (1) one truck wash down station at existing Terrace Drive exit to Main Street.
-\$200,000.00 – 21A, 22A, 23A Combo Price Discount

\$8,951,000.00 - HVAC Base Bid Amount
\$519,200.00 – Addendum #4 (Smoke Evac System)



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\$58,000.00 – Cleaning of Ductwork
\$185,500.00 - Temporary Cooling - 1 Cooling Season
\$139,800.00 - Chilled Water Line - Crawford to Site Limit
\$209,600.00 - Chilled Water Line - Site Limit to White Hall (Accepted Alternate #2)
- \$200,200.00 - 21A, 22A, 23A Combo Price Discount

\$13,065,043.00 - TOTAL CONTRACT AMOUNT

3.1.1 LABOR RATES

The labor rates submitted in the proposal form shall remain valid for the duration of this agreement, must be in accordance with the Contract Documents, and may be incorporated into this agreement after review and verification by the Construction Manager.

See attachments

3.1.2 ALTERNATE PRICE(S)

The following Alternate Price(s) have been Accepted, Rejected, or are being reserved for future acceptance, if applicable, by the Owner/Construction Manager.

For alternates that are being reserved for future acceptance, the Trade Contractor shall notify the Construction Manager in writing of the latest date that those below listed alternate(s) may be accepted.

Fire Protection:

Alternate #1 to provide a deduct to remove all all Fire-stopping & Fire-safing of penetrations in 21A Package is being Reserved for CM Acceptance in the amount of \$8,500.00.

Plumbing:

Alternate #1 to provide a deduct to remove all all Fire-stopping & Fire-safing of penetrations in 22A Package is being Reserved for CM Acceptance in the amount of \$29,000.00.

HVAC:

Alternate #1 to provide Interior & Exterior Louvers is Rejected in the amount of \$104,500.00.

Alternate #2 to provide installation of chilled water line from site limit to White Hall has been ACCEPTED in the amount of \$209,600.00.

Alternate #3 to provide Radiant Flooring System is being RESERVED for Owner Acceptance in the amount of \$70,808.00.

Alternate #4 to provide Air Enterprises Air Handling Unit is being RESERVED for Owner Acceptance in the amount of \$626,918.00.

Alternate #5 to provide a deduct to remove all all Fire-stopping & Fire-safing of penetrations in 23A Package is being Reserved for CM Acceptance in the amount of \$33,000.00.

Alternate #6 to provide a deduct to remove the Temporary Cooling for 1 Cooling Season in 23A Package is being Reserved for CM Acceptance in the amount of \$185,500.

In current funds subject to additions and deductions for changes, as may be agreed upon, and to make payments on account thereof as follows:

3.2 On the established day of each month, the Trade Contractor shall deliver to the Construction Manager a detailed statement acceptable to the Construction Manager, and if required, supported by receipts, vouchers, etc. showing values of all materials delivered and Work completed up to the established billing date for which payment is requested. Monthly and final payments will be made to the Trade Contractor by electronic funds transfer within seven (7) calendar days after receipt of payment by the Construction Manager from the Owner. The retained percentage will be forwarded as soon as received by the Construction Manager from the Owner. It is specifically understood and agreed that payment to the Trade Contractor is dependent, as a strict condition precedent, upon the Construction Manager receiving contract payments, including retainage from the Owner. Further, progress construction payments to the Trade Contractor are only required to be made from the funds received from the Owner for Work performed by the Trade Contractor. Prior to submission of the first statement, the Trade Contractor will deliver to the Construction Manager, for review and approval, a detailed breakdown of this contract sum showing a schedule of values for the various parts of the Work. Once accepted, this schedule of values will be used as a basis for checking the Trade Contractor's monthly statement. This schedule of values shall not be front-end loaded.

3.3 The amount of each progress payment to the Trade Contractor shall be equal to the percentage of completion allowed to the Construction Manager for the Work of the Trade Contractor, applied to the Contract Amount or Sum of the Agreement, plus the amount allowed for materials and equipment suitably stored by the Trade Contractor, less the percentage retained from payments to the Construction Manager. The Construction Manager shall make available to the Trade Contractor evidence of percentages of completion certified on its account.

3.4 The Trade Contractor shall, with the second and each succeeding monthly request for payment, submit receipts and/or an affidavit and waiver of lien showing all payments made for labor, services, equipment and materials and on account for all Work covered in the previous months' request for payment. Affidavit and waiver of liens are required to be submitted from Trade Contractors' suppliers and/or trade subcontractors (all tiers) monthly. The Trade Contractor agrees to use the progress payment waiver as well as the release and the final waiver and release forms as referenced or incorporated into this Agreement. The Trade Contractor shall be required to execute a final waiver and release as a condition precedent to receiving final payment.

3.5 Ten percent (10%) of each payment shall be retained, at the discretion of the Construction Manager, unless specific provisions to the contrary are indicated in the Contract Documents.



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3.6 No payment made under this Agreement, including the final payment, shall be evidence of proper performance of the Work, either wholly or in part, and no payment shall be construed as an acceptance of defective, non-compliant or improper Work or materials.

3.7 Provided the Construction Manager is not in default of the payment terms to this Agreement, the Trade Contractor shall save and keep the Construction Manager, its Surety, if applicable, the Owner, and the Owner's property free and clear from all mechanics' and materialmen's' liens, construction liens, and all other liens as well as any and all bond claimants, bond claims, or any other claims or actions, legal or equitable, arising out of the Trade Contractor's Work hereunder. In the event that any such lien, bond or other claim or action is asserted, threatened or filed by anyone claiming by, thru, or under the Trade Contractor, then the Trade Contractor shall remove and discharge same, either by bonding or otherwise removing, paying or releasing same, within five (5) calendar days of the notice of such lien, claim or action.

3.8 At all times, Construction Manager, in its sole discretion, shall have the right but not the obligation to make direct payment or joint check payment to any of the Trade Contractor's lower tier subcontractors, materialmen, laborers, suppliers and/or lienors, and to automatically deduct such amounts from the Trade Contractor's Contract Amount. Trade Contractor hereby agrees to cooperate as necessary to facilitate such direct or joint check payments and will promptly execute any and all documents reasonably requested by Construction Manager for that purpose. Notwithstanding the foregoing, and unless a condition of the initial contract award, Construction Manager shall pay Trade Contractor's Trade-Subcontractors, materialmen, laborers, suppliers, and/or lienors directly only after (1) providing fourteen (14) day's prior written notice of intent to do so and (2) Trade Contractor fails to cure the condition that is the basis for such proposed direct payment during the fourteen (14) day notice period.

3.9 The Trade Contractor further agrees that a material breach by Trade Contractor of any other Agreement between Construction Manager and Trade Contractor, shall constitute a breach under this Agreement. In the event of such a breach, in addition to any other right or remedy at law or in equity, the Construction Manager shall also have the right to apply any payments due Trade Contractor under this or other Agreement(s) as a set-off to satisfy any unpaid expenses, costs, claims, or Damages incurred by Construction Manager under this Agreement.

3.10 The Construction Manager shall have the right, at Construction Manager's sole discretion, to process all Trade Contractor payments, including all progress payments as well as the final payment, using an Electronic Billing System ("Electronic Billing System"), which is an automated third party web-based system that operates as an automated clearing house for electronic payments. Construction Manager may elect to withdraw or terminate use of the Electronic Billing System in its sole discretion. Any Trade Contractor cost of registering with or using the Electronic Billing System is included herein. Trade Contractor shall comply with the billing instructions included in the Prime Contract and/or provided by the Construction Manager in writing, including any instructions related to the Electronic Billing System.

ARTICLE 4

THE CONTRACT DOCUMENTS

4.1 The Contract Documents consist of: (i) this Agreement and any documents referred to herein or exhibits attached hereto; (ii) the Contract between the Owner and the Construction Manager ("Prime Contract"), including all conditions, exhibits and documents referred to or incorporated into the Prime Contract, including but not limited to the Drawings, Plans and Specifications for the Project; and (iii) any modifications or amendments to this Agreement as provided herein.

4.2 The Trade Contractor agrees to perform the Work in strict compliance with the Contract Documents, and subject to the final approval of the Architect/Engineer and/or other specified representative of the Owner.

4.3 To the extent of Trade Contractor's Work, the Trade Contractor agrees to be bound to and assume toward the Construction Manager all of the obligations and responsibilities that the Construction Manager, by those documents, assumes toward the Owner. Contract Documents are available, at reasonable times, at the office of the Construction Manager for examination by the Trade Contractor.

4.4 If there is a provision for liquidated damages in the Contract Documents, the Trade Contractor shall be liable to the Construction Manager for any liquidated damages for which the Construction Manager is held responsible by reason of the failure of the Trade Contractor to prosecute the Work pursuant to this Agreement. The flow down of such liquidated damages to the Trade Contractor is not intended as the Construction Manager's sole and exclusive remedy for the Trade Contractor's untimely performance or delays, and Construction Manager further reserves all other rights, remedies and damages as set forth in this Trade Contractor Agreement or in equity.

ARTICLE 5

INDEMNITY

5.1 **FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE TRADE CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD THE CONSTRUCTION MANAGER, THE OWNER, THE ARCHITECT/ENGINEER, AND ALL OF THEIR AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, DEDUCTIBLES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR FAILURE IN PERFORMANCE OF THE TRADE CONTRACTOR'S WORK UNDER THIS AGREEMENT PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE ARISES OUT OF OR RESULTS FROM ANY OF THE FOLLOWING:**

- (a) BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING THE LOSS OF USE RESULTING THEREFROM, TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF THE TRADE CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TRADE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THE TRADE CONTRACTOR MAY BE LIABLE, REGARDLESS OF WHETHER CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER;**
- (b) ANY ACT OR OMISSION OF THE TRADE CONTRACTOR OR ANY OF ITS TRADE-SUBCONTRACTORS, OF ANY TIER OR ANY PERSON OR ENTITY FOR WHOSE ACTS OR OMISSIONS ANY OF THEM MAY BE LIABLE;**
- (c) THE INACCURACY OF ANY WARRANTY OR REPRESENTATION BY THE TRADE CONTRACTOR GIVEN IN ACCORDANCE WITH OR CONTAINED IN THE CONTRACT DOCUMENTS;**
- (d) ANY BREACH OF THIS AGREEMENT BY THE TRADE CONTRACTOR AND/OR ITS TRADE-SUBCONTRACTORS OF ANY TIER;**
- (e) ANY CLAIMS BY EMPLOYEES OF THE TRADE CONTRACTOR AND/OR ITS TRADE-SUBCONTRACTORS OF ANY TIER, INCLUDING, WITHOUT LIMITATION, THOSE ALLEGING EMPLOYMENT DISCRIMINATION, WRONGFUL TERMINATION OR SEXUAL HARASSMENT;**
- (f) ANY CLAIMS OF THE TRADE-SUBCONTRACTORS OF ANY TIER, INCLUDING WITHOUT LIMITATION, THOSE FOR ADDITIONAL COMPENSATION AND CLAIMS**



AGAINST THE TRADE CONTRACTOR'S OR CONSTRUCTION MANAGER'S BOND; OR

(g) ANY OTHER WRONGFUL OR NEGLIGENT ACT OR OMISSION OF THE TRADE CONTRACTOR OR ANY OF ITS TRADE-SUBCONTRACTORS, OF ANY TIER OR ANY PERSON OR ENTITY FOR WHOSE ACTS OR OMISSIONS ANY OF THEM MAY BE LIABLE.

SUCH OBLIGATIONS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY PARTY OR PERSON DESCRIBED IN THIS PARAGRAPH. IN ANY AND ALL CLAIMS AGAINST THE CONSTRUCTION MANAGER, OR ANY OF ITS AGENTS OR EMPLOYEES, BY ANY EMPLOYEE OF THE TRADE CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE TRADE CONTRACTOR, OR ANYONE FOR WHOSE ACTS HE MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH 5.1 SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE TRADE CONTRACTOR UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

The provisions of this subparagraph 5.1 and the obligations of the Trade Contractor hereunder shall survive Final Completion or Termination of this Agreement.

5.2 The obligations of the Trade Contractor under paragraph 5.1 shall not extend to the liability of the Architect/Engineer, his agents, or employees, arising out of: the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications and/or the giving of or failure to give directions or instructions by the Architect/Engineer, his agents or employees, providing such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 6

PERFORMANCE BOND AND LABOR AND MATERIAL BOND; INSURANCE

6.1 If required by the Construction Manager in Article 12 of this Agreement, the Trade Contractor shall provide with this executed agreement a 100% Performance Bond and a 100% Labor and Material Payment Bond, both issued in an amount equal to the Contract Sum of this Agreement. Bonds and the accompanying Power of Attorney shall be issued on bond forms acceptable to the Construction Manager and shall name the Construction Manager as the Obligatee. Such bonds shall be issued by a Surety currently listed on the US Treasury's Listing of Certified Companies and have a minimum AM Best Rating of A-, FSC VII, unless otherwise agreed by the Construction Manager in writing. Notwithstanding any other provisions of the Agreement to the contrary, failure to timely issue the bonds in accordance with the provisions of this Article shall be deemed a material breach of this Agreement. The penal sum of any bonds issued by any of the Trade Contractor's sureties shall be automatically and immediately increased in an amount equal to any increase in the Trade Contract Sum without notice to Trade Contractor or any of Trade Contractor's sureties.

6.2 The Trade Contractor is required to comply with the Construction Manager's Trade Contractor prequalification procedures which, include in part allowing the Construction Manager to review the Trade Contractor's most current reviewed, compiled, or audited financial statement. At any time during the performance of this Agreement, upon the request of the Construction Manager, the Trade Contractor shall provide its most current financial information to the Construction Manager for review. Failure to comply with this requirement shall constitute a material breach of this Agreement.

6.3 Before the commencement of its Work, entering the Project site (at any time), or no later than ten (10) days after signing the Trade Contract, Trade Contractor shall provide evidence that it has obtained the insurance required by this Article as well as that which is legally required by any US federal or state laws where the work is performed. This insurance shall be placed with a company or companies rated A-, FSC VII or better by A.M. Best and licensed to do business in the jurisdiction(s) in which the work is performed.

The commercial general liability, excess liability, pollution liability and professional liability insurance required in this Article shall be maintained continuously until the later of the period of the statute of limitations or the statute of repose for the types of claims covered by the particular policy type. All other insurance required in this Article shall be maintained continuously until final payment is made to Trade Contractor for its work.

Any insurance required of Trade Contractor shall protect the Trade Contractor from claims which may arise for which the Trade Contractor may be legally liable, whether such operations be by the Trade Contractor, by a its trade subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The insurance limits and types required in this Article are minimum requirements (and are subject to any broader terms required by Owner) and are denominated in US Dollars.

Trade Contractor shall require, except as it relates to limits of liability, its subcontractors of all tiers to meet the same insurance requirements as are required of it in this Agreement.

If the Project is insured by a wrap-up insurance program, then Trade Contractor shall refer to both the Project wrap-up manual and any insurance related addendum to the Prime Contract (incorporated herein as a Contract Document) for any additional or alternate insurance obligations.

If the Trade Contractor shall fail to provide any or all of the required insurance described hereunder, Construction Manager may elect to take out said prescribed insurance in the name and at the expense of Subcontractor without limitation of any other rights that Contractor may have.

It is solely Trade Contractor's obligation to ensure that it provides the appropriate insurances required in the jurisdiction(s) in which the work is being performed, and that it has included all relevant costs. Trade Contractor waives any rights it has against Construction Manager for premiums, claims, penalties, deductibles, or other costs incurred as a result of Trade Contractor's failure to provide insurance required by law.

(a) **Workers' Compensation and Employer's Liability.** Trade Contractor shall provide workers compensation and employer's liability insurance in any jurisdiction(s) where the work is being performed or where benefits may be applied. The workers' compensation insurance shall include a Voluntary Compensation Coverage Endorsement. When performing work in any monopolistic state or territory the Trade Contractor shall provide evidence of "stop gap" insurance in addition to workers' compensation. Trade Contractor shall provide the insurance required in this Article whether or not Trade Contractor hires all or none of its employees directly, uses temporary employees and/or uses other labor services. Trade Contractor shall require any firm providing labor services to it to provide all of the same workers' compensation and employer's liability coverages as are required of Trade Contractor in this Article and shall require the firm providing the labor services to schedule the Trade Contractor on an Alternate Employer Endorsement attached to its workers' compensation policy. Trade Contractor agrees to comply with any requests by the Construction Manager to verify coverage is being provided for leased or temporary employees. If Trade Contractor is leasing labor to Construction Manager, then Trade Contractor shall attach the alternate employer endorsement to its workers' compensation policy, and shall schedule the Construction Manager and this Agreement on the form. The employer's liability (or "stop gap" in monopolistic states) coverage shall provide limits of not less than \$500,000 bodily injury by accident per accident, \$500,000 bodily injury by disease policy limit, and \$500,000 bodily injury by disease per employee. When working on projects governed by defense base act including public works jobs where required and military bases trade contractor is responsible to ensure that it has purchased this coverage. For all jobs with exposure to the United States longshoreman act or maritime act, trade contractor shall ensure that workers compensation policies are endorsed to cover such



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exposures.

(b) **Commercial General Liability ("CGL").** Trade Contractor shall provide CGL coverage equivalent to the most recent edition of the ISO CG 00 01 occurrence form. This insurance shall:

- (1) Include coverage for explosion, collapse and underground hazards (the "XCU" hazards)
- (2) Include contractual liability coverage for bodily injury and property damage arising out of premises-ongoing operations and products-completed operations without any limitation;
- (3) Not include any residential limitations (or exclusions) or prior work exclusions unless approved in writing by Construction Manager's risk manager;
- (4) Provide limits not less than \$1,000,000 per occurrence (Bodily Injury and Property Damage), \$1,000,000 personal and advertising injury, \$2,000,000 general aggregate, \$2,000,000 products-completed operations aggregate and \$5,000 medical expense. The general aggregate limit shall be on a per project basis;
- (5) Not contain a subsidence exclusion; and
- (6) Not contain, if trade contractor is installing any EIFS system, an EIFS exclusion (or must contain an EIFS liability policy in the amount of \$1,000,000/\$2,000,000).

If Trade Contractor's work is to be performed within fifty (50) feet of any railroad property, or affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing, then the most current version of endorsement ISO CG 24 17 (or its equivalent) shall be attached to the CGL.

(c) **Business Automobile Liability Policy ("BAP").** Trade Contractor shall provide BAP insurance with limits not be less than \$1,000,000 combined single limit for each accident which includes coverage for claims for damages due to bodily injury or property damage arising out of the ownership, maintenance, or use of any land motor vehicle (including trailer or semitrailer) designed for use on public roads. Coverage shall be provided for any owned, non-owned or hired vehicle. This insurance shall also include contractual liability coverage. If the Commercial general liability form edition date is 12/04 or later then the commercial auto policy must also include the CA 0051 endorsement: Mobile equipment subject to the motor vehicle laws endorsement.

If Trade Contractor will be hauling or transporting any hazardous materials as defined in paragraph (f) below, then this insurance shall include the most current version of the ISO CA 99 48 Broadened Pollution Liability Endorsement and the MCS 90 endorsements, or their equivalent.

If Contractor's work is to be performed within fifty (50) feet of any railroad property or affecting any bridge or trestle, tracks, roadbeds tunnels, underpass or crossing, then the most current version of ISO CA 20 70 (or its equivalent) shall be attached to the auto policy.

(d) **Excess (or Umbrella) Liability.** Trade Contractor shall provide occurrence-based follow-form excess (or umbrella) liability insurance which shall provide coverage excess over its employer's liability, CGL and BAP insurance. The excess (or umbrella) coverage limits shall not be less than \$5,000,000 each occurrence and \$5,000,000 annual aggregate.

If Trade Contractor's Work requires it to provide a crane used to hoist, lower and horizontally move a suspended load then:

- (1) If the crane is a tower crane, such limits shall be increased to \$25,000,000 per occurrence/\$25,000,000 in aggregate; or
- (2) If the crane is other than a tower crane, then such limits shall be increased to \$10,000,000 per occurrence/\$10,000,000 in aggregate.

The liability limits required by Trade contractor under this agreement for the primary CGL insurance and the Excess liability insurance may be satisfied thru any combination of limits contained on either the primary or excess liability or combined policies of insurance.

(e) **Professional Liability.** If the Trade Contractor's scope of work (including the scope of any of its subcontractors or subconsultants) includes providing professional services that include, but are not limited to, performing: architecture, engineering, landscape architecture, land surveying or planning, geological investigation, interior design/space planning, preparation and signing or stamping of drawings, maps, surveys or construction specifications, consulting, programming or design and development of computer software or websites by the Trade Contractor or by subcontractors on behalf of the Trade Contractor, the Trade Contractor shall provide professional liability insurance with limits not less than \$1,000,000 each claim and \$1,000,000 annual aggregate. Such coverage shall include a prior acts endorsement and shall be maintained for at least 6 years (or the statutory period of repose under prevailing state law) after completion of the work or such longer time as required by the General Contract Documents. If Trade Contractor is subcontracting out its entire scope of professional services, then in lieu of Trade Contractor providing professional liability insurance, Construction Manager will accept proof of the professional liability insurance required in this Article from each person or entity who is performing the professional services on behalf of Trade Contractor.

The retroactive date on all professional liability policies provided by Trade Contractor or any of its subcontractors shall precede the start of any work.

(f) **Contractor's Pollution Liability.** If the Trade Contractor's scope of work (including the scope of any of its subcontractors or subconsultants) includes providing pollution services that include, but are not limited to, performing: investigation and characterization of contamination of land, groundwater or structures, demolition of structures, abatement of hazardous or regulated materials (Hazardous or regulated materials shall include, but are not limited to, asbestos, petroleum products, lead, mold, mercury or polychlorinated biphenyls ("PCBs")), remediation of contaminated soil or groundwater including transportation and disposal of contaminated media, installation or removal of underground storage tanks, or any storage, transportation or disposal of materials that are hazardous or regulated under environmental laws by the Trade Contractor or by subcontractors on behalf of the Trade Contractor, the Trade Contractor shall provide Contractor's Pollution Liability Insurance with limits not less than \$5,000,000 each occurrence and \$5,000,000 annual aggregate.

If Trade Contractor is subcontracting out its entire scope of pollution services, Construction Manager may accept proof of the pollution liability insurance required in this Article from each person or entity who is performing the pollution services on behalf of Trade Contractor.

If Trade Contractor's scope of work includes mold/fungus remediation or the Project involves any residential, health care, custodial care or educational occupancy, then the contractor's pollution liability insurance shall include mold/fungus liability coverage in the amount of the contractor's pollution limits required herein.

All insurance required in this paragraph shall include coverage for bodily injury and property damage liability, defense costs, and clean-up costs and shall provide non-owned off-



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site disposal coverage if hazardous or regulated materials will be transported to a disposal site. The retroactive date on all pollution liability policies provided by Trade Contractor or any of its subcontractors shall precede the start of any work. Owner, Construction Manager and all required indemnitee parties shall be included as additional insured.

(g) **Contractor's Equipment; Property; Riggers Liability Contractor's Equipment; Property; Riggers Liability.** Trade Contractor shall maintain all-risk property insurance including coverage for the full replacement cost value of (i) its tools, equipment (including mechanical heavy equipment) and other property, whether owned, rented or borrowed, the capital value of which is not intended to be incorporated into the Project and (ii) any property intended to be incorporated into its Work while in-transit to the Project Site or stored away from the Project Site.

If Trade Contractor's Work includes move management services such that it is responsible for: moving of personal property from one location to another (or within a single location), storage of personal property at one or more locations and/or installation of personal property then it shall provide an installation floater covering such exposures for the full replacement cost of such property.

To the extent the Trade Contractor's Work requires it to provide a crane to hoist, lower or otherwise move a suspended load, then it shall provide riggers liability insurance. The limit for this coverage shall equal or exceed the full replacement cost value of the most expensive hoist intended to be made within its Scope of Work. This insurance shall name Construction Manager and Owner as loss payees to this insurance.

(h) **Cyber Liability Insurance.** If the Trade Contractor's scope of work involves working on Building Information Systems, Security / Access Control Systems or Tel/Data Systems, the Trade Contractor shall provide Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving: infringement of intellectual property (including but not limited to infringement of copyright, trademark, and trade dress), invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

(i) **Additional Insured.** For purposes of this Article "Additional Insureds" shall mean (1) the Construction Manager (and its partners or members if Construction Manager is a joint venture or LLC), (2) Owner, (3) both Owner and Construction Manager's officers, directors and employees, (4) any person or entity requested by Construction Manager or Owner, and (5) any other person or entity required to be added as an additional insured by the Contract Documents. The Additional Insureds shall be named as additional insureds on Trade Contractor's CGL, BAP, excess liability, umbrella liability and contractor's pollution liability insurance policies. Such additional insured coverage shall:

1. Be provided on a primary, non-contributory basis;
2. Provide additional insured status to all indemnitee parties for whom you have agreed by this written contract or agreement to provide such coverage;
3. Provide the Additional Insureds with coverage for actual or alleged bodily injury, property damage and personal and advertising liability arising out of any premises-ongoing operations and/or products-completed operations;
4. Be provided on any version of ISO forms CG 20 10 (10 01) and CG 20 37 (10 01), or an equivalent that has been approved by Construction Manager prior to the Trade Contractor entering the site; and
5. Remain in effect for the same duration that the insurance required under this Article shall be in effect.

If Trade Contractor's policy limits are greater than the minimum limits of liability required in this Article for a type of insurance, then the full extent of those policy limits shall also be available to the Additional Insureds. Any of Trade Contractor's excess or umbrella liability policies shall be expressly endorsed to state that coverage for the Additional Insureds is primary and that the insurer will not seek contribution from any other insurance available to the Additional Insured.

(j) **Self-Insured Retentions (SIR's); Deductibles.** Trade Contractor is responsible for any Deductible or Self Insured retentions. Any SIR in excess of \$250,000 must be approved by Construction Manager. Trade Contractor shall be considered a self-insurer with respect to its additional insured obligations under paragraph (h) for any self-insured retention or deductible applied by its insurer to any of the Additional Insureds.

(k) **Certificates of Insurance.** Trade Contractor shall provide a Certificate of Insurance to the Construction Manager to evidence its compliance with the insurance obligations in the Contract. The Certification of Insurance shall:

1. State the additional insured form, primary and non-contributory and waiver of subrogation coverage being provided in the description of operations section. Any schedule required in such endorsements shall include all parties as additional insureds including any and all indemnities as specified in the Prime Contract. Acceptable language shall include "for whom you have agreed in a written contract";
2. Include evidence of §6.3(i) any self-insured retentions and (ii) project name and number; and
3. Include as an attachment a hard copy of any compliant documentation which evidences the CGL additional insured endorsement coverage required in §6.3(i) above.

Construction Manager's acceptance of any certificate of insurance or coverage provision in no way waives Construction Manager's right to later assert that Trade Contractor did not provide insurance in conformance with the Contract Documents. If Trade Contractor fails to comply with its insurance obligations under the Contract Documents, then Construction Manager may withhold monthly progress payments and may be considered a material breach of this agreement.

Upon request, Trade Contractor shall provide Construction Manager with any certificate of insurance, coverage provision or certified copy of any insurance policy applicable to coverage required of Trade Contractor in the Contract Documents. Trade Contractor shall endorse its policies to provide a minimum of 30 days' cancellation notice to Construction Manager. Evidence of the insurance required in this Article shall also be provided any time after the work is completed but Trade Contractor has re-entered the Project site.

(l) **Waiver.** Trade Contractor agrees to waive any right of action against Construction Manager (and its partners if CM is a joint venture or its members if an LLC), Owner, and any others required to be provided a waiver by the Contract Documents (collectively the "Waiver Parties") for recovery of loss and/or damages to the extent covered, or that should have been covered, by the insurance required of Trade Contractor in the Contract Documents or any other insurance provided by Trade Contractor which is applicable to the Project. Such waivers shall be provided by specific endorsement if the policy itself does not otherwise provide the required language.

ARTICLE 7

WARRANTY



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7.1 The Trade Contractor warrants to the Owner and the Construction Manager that all materials and equipment furnished will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents.

7.1.1 All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

7.1.2 If required by the Construction Manager, the Trade Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In addition to any other warranty or guarantee as required by the Contract Documents or this Agreement, the Trade Contractor agrees to promptly make good, without cost to the Owner or Construction Manager, any and all defects, due to faulty workmanship, equipment and/or materials, which may appear within a guarantee or warranty period so established in the Contract Documents.

7.1.3 If no such period is otherwise stipulated in the Contract Documents, then such warranty and guarantee shall be for a period of one (1) year from date of substantial completion of the entire Project. The extent or limitations on warranties granted by manufacturer or other parties by others shall not relieve the Trade Contractor of any of its responsibilities pursuant to the Trade Contract Agreement or otherwise at law or in equity.

7.2 The warranty of materials, equipment and workmanship defined in 7.1 and its subparts is separate from, independent of, and in addition to any other guarantees or warranties required by the Contract Documents. To the extent of Trade Contractor's Work, the Trade Contractor shall extend to Construction Manager the same warranties and guarantees that the Construction Manager may be obligated to extend to the Owner or others by the Contract Documents.

7.3 Warranty and guaranty documentation issued by the Trade Contractor shall clearly define what is to be warranted or guaranteed; the extent, terms, conditions, time and effective dates, which shall comply with the Contract Documents. The Trade Contractor further agrees to provide any and all warranty and guarantee documentation as required by the terms of the Contract Documents as a condition precedent to final payment.

7.4 Warranties or guarantees shall not commence to run until:

- a. The actual completion of the Trade Contractor's work,
- b. The date of Substantial Completion of the project,
- c. The Owner is in possession of and accepts all the specified guaranty and/or warranty documentation,
- d. All turnover meetings, training, and other activities are complete, and
- e. The Owner has received the specified close out documentation including, without limitation, any tools, materials and manuals for the operation and maintenance of the system/equipment.

7.5 If specified in the Contract Documents and prior to the date of Substantial Completion of the project the Owner or Construction Manager occupies or uses any separate unit of the Work, the Trade Contractor shall include all costs associated with extending the guarantee/warranty period to cover the period in advance of the date of Substantial Completion of the project and the specified period after the date of Substantial Completion. The Trade Contractor shall also provide maintenance during this extended period.

7.6 If repairs or corrections are required in connection with the guaranteed Work, the Trade Contractor shall, promptly, within 48 hours after receipt of notice from the Construction Manager or Owner and without expense to the Owner or Construction Manager, commence and continue to effect such repairs or corrections to:

- a. Place in satisfactory condition all of such guaranteed Work and correct all defects therein; and
- b. Make good all damage to the structure, finishes or site or equipment or contents thereof, which, in the opinion of the Architect, Engineer and Construction Manager is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract;
- c. Repair or replace any adjoining or obstructing trade work necessarily disturbed by the remediation of Trade Contractor's defective Work, regardless of whether that work was initially part of Trade Contractor's scope.

7.7 Notifications by Owner of defects shall stop the warranty time period. The guarantee or warranty period for that replaced or restored work shall be reinstated for the remaining time period, starting on the date of acceptance of the replaced or restored work.

7.8 If the Trade Contractor after notice fails to proceed within 48 hours to commence and continue to comply with the terms of the guarantee, the Owner or Construction Manager may have the defect corrected in which case the Trade Contractor and his surety, if applicable, shall be liable for all expenses incurred.

7.9 All special guarantees or warranties applicable to specific parts of the Work that may be set forth in the Contract Documents shall be subject to the terms of this Article at a minimum during the first year of the life of such special guarantee.

7.10 Nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which the Trade Contractor might have in law or equity.

7.11 In the event the Work of the Trade Contractor is to be modified by another Trade Contractor, either before or after inspection, the first Trade Contractor shall remain responsible in all respects under the warranty given in Article 7 and under any other warranties provided in the Contract Documents or by law. However, the first Trade Contractor shall not be responsible for any defects in material or workmanship introduced by the Trade Contractor modifying its work. Both the first Trade Contractor and the Trade Contractor making the modifications shall each be responsible solely for the work done by each. The Trade Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the Work, which it is modifying.

7.12 In the event the Project or Trade Contractor's Work involves the construction of a condominium, then to the extent of the Trade Contractor's Work, the Trade Contractor shall extend to Construction Manager the same warranties and guarantees which the Construction Manager is obligated or required to extend to any person(s), company, corporation, partnership, developer, limited liability company, business entity, condominium association, unit owner, or any owner by any applicable rule, code, ordinance or law. The Trade Contractor shall further extend directly to any person(s), company, corporation, partnership, developer, limited liability company, business entity, condominium association, unit owner, or any other owner all warranties, guarantees, or protections as may be required by any applicable rule, code, ordinance, requirement or law.

ARTICLE 8



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CHANGES IN THE WORK

8.1 The Construction Manager reserves the right, in Construction Manager's sole discretion, to require changes, deviations, additions or deletions to the Work in writing (hereinafter "Change"), and any adjustment in the Contract Sum or Time shall be pursuant to the procedures and conditions set forth in this Agreement.

8.2 Before proceeding with any Change including, but not limited to, any addition, deletion, deviation or other change, and as a condition precedent thereto, the Trade Contractor shall first obtain either a written Change Order (hereinafter "Change Order") or a written Subcontract Change Directive (hereinafter "SCD") from the Construction Manager's Authorized Representative.

8.2.1 Change Order. As a condition precedent to be a valid and enforceable Change Order, the Change Order must be prepared on the Construction Manager's form and be fully executed by the Trade Contractor and one of the Construction Manager's Authorized Representatives.

8.2.2 Subcontract Change Directive ("SCD"). As a condition precedent to be a valid and enforceable SCD, the SCD must be prepared and executed by one of the Construction Manager's Authorized Representatives. The Construction Manager shall have the right to issue an SCD to Trade Contractor, at any time, directing a Change prior to any agreement on any adjustment, if any, to the Contract Sum or the Contract Time for Trade Contractor's Work, or both.

8.2.3 Upon receipt of either a Change Order or an SCD, the Trade Contractor shall proceed diligently with the performance of the Work, including the SCD. If an SCD is issued by Construction Manager, then the Trade Contractor shall continue to diligently proceed with such Change pending a final resolution of any adjustments in the Contract Sum and/or Contract Time (hereinafter "Change Claim") pursuant to the terms and conditions set forth in this Article. For the avoidance of doubt, as used herein, a "Change Claim" shall be inclusive of any and all amounts, costs, payments, compensation, time, extensions, overhead, profit, claims and issues of the Trade Contractor arising from or related to such Change, without exception. A Change Order is deemed a final and conclusive resolution and settlement of the Trade Contractor's Change Claim arising from or related to the Change. With respect to any Trade Contractor Change Claim, as a condition precedent, the Trade Contractor shall have first received an SCD from the Construction Manager and shall have timely complied with the procedures and conditions set forth in this Article 8, including Subsection 8.3. Pending a final determination of the Change Claim, Trade Contractor may request payment for certain costs completed under the SCD in its application for payment, however such request is subject to the approval of the Construction Manager and Owner. Any payment issued for SCD is without prejudice to Construction Manager's right and defenses, and is subject to a reservation of the procedures and conditions set forth herein. Any failure of the Trade Contractor to diligently proceed with a Change Order or an SCD as set forth in this Article 8 shall be a material breach of this Agreement.

8.3 Notwithstanding any other term or provision in this Agreement, as a condition precedent to any Trade Contractor's Change Claim, Trade Contractor shall, within seventy-two (72) hours of the occurrence giving rise to such Change Claim, provide Construction Manager with a separate written "Notice of Change Claim" specifying that such Change constitutes extra work for which it believes it is entitled to adjustments in Contract Sum and/or Contract Time, including the amount of such adjustments (hereinafter "Claim Notice"). Trade Contractor shall provide all documentary and other written information in support of such Change Claim within five (5) business days of Trade Contractor's Notice of Change Claim to Construction Manager. In addition, Trade Contractor shall provide all supplementary information, including any supporting labor, material or other costs documentation or information, requested by Construction Manager within five (5) business days of Construction Manager's request. At all times material hereto, the Trade Contractor shall have no communications directly with the Owner or Architect. Failure of the Trade Contractor to timely provide such written Notice of Change Claim, the documentary and other written information in support, and/or the supplemental information requested by the Construction Manager relating to such Change Claim shall be a complete waiver by Trade Contractor to any adjustment in Contract Sum and Contract Time related to such Change. In the event of a disagreement as to any adjustment arising from Trade Contractor's Change Claim and SCD as set forth in this Article, then a final determination of the Change Claim shall be made in one of the following methods at Construction Manager's discretion:

- (a) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation and agreed upon by the Construction Manager and the Trade Contractor; or
- (b) by unit prices stated in the Contract Documents; or
- (c) if no such unit prices are set forth and if the parties cannot agree upon a lump sum, then by actual net cost in money to the Trade Contractor of materials and labor (including insurance and applicable taxes) required, plus rental of plant equipment (other than small tools and small equipment) plus compensation for overhead and for profit not to exceed the mark-up set forth in Article 12 of this Agreement. Field overhead will not be considered as part of actual net cost; or,
- (d) by the method provided in subparagraph (i) or (ii) below:
 - (i) For a Change arising from Owner direction, Trade Contractor shall be entitled to the additional compensation and/or schedule extension as agreed to and actually paid by, or in the case of a schedule extension, granted by, the Owner. In the event disagreement arises from the Owner's direction, then Trade Contractor agrees to be bound by the Owner's determination as to whether or not there shall be reimbursement or schedule extension, and to the Owner's determination as to the amount to be paid and/or schedule extension to be granted, if any; or,
 - (ii) The cost of such work shall be determined by the Construction Manager on the basis of reasonable expenditures and savings of those performing the work attributable to the Change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit not to exceed the rates in Article 12 of this Agreement. Further, in such case, and also under clauses 8.3 (c) and 8.4 (d)(ii), the Trade Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting records, costs and data for inclusion in a change order. Unless otherwise provided in the Contract Documents or this Agreement, cost shall be limited to the following: cost of materials including sales tax and cost of delivery, cost of construction labor including social security, old age and unemployment insurance and fringe benefits required by Agreement or custom; workers or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the Change subject to the Trade Contractor complying with and timely providing all such appropriate supporting records, costs and data. Pending final determination of cost, any payments, on account shall be made as determined by the Construction Manager. The amount of credit to be allowed by the Trade Contractor for any deletion, including de-scoping any Work, in the Change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Construction Manager. When both additions and credits covering related work or substitutions are involved in any one Change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that Change.

8.4 **Construction Manager's Audit.** Construction Manager's duly authorized representative shall have access, at all reasonable times, to all Trade Contractor's personnel as well as to all Trade Contractor's original books, records, correspondence, instructions, plans, drawings, receipts, vouchers, costs records, project files and reports, and memoranda of every description pertaining to Change for the purpose of auditing and verifying Trade Contractor's net cost arising from the Change, or for any other reasonable purpose. Construction Manager's representative shall have the right to reproduce any of the aforesaid documents. Trade Contractor shall preserve, and shall cause its subcontractors to preserve all the aforesaid documents for a period of not less than two (2) years after final payment or termination of Work or such longer time as may be required by the Contract Documents or applicable law.

8.5 Notwithstanding any other provisions, terms or conditions set forth in this Agreement, including Article 8, and for the avoidance of any doubt, Construction Manager shall not be liable to Trade Contractor for any Changes nor for any Change Claims unless and, as a condition precedent, Trade Contractor has received either: (i) an SCD has been issued and executed by Construction Manager Authorized Representative, or (ii) a Change Order has been fully executed by the Trade Contractor and Construction Manager, in each event as set forth in this



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Article. As used in this Article 8, the Construction Manager's Authorized Representative shall be the Project Executive, Project Manager or Chief Purchasing Agent for the Project (herein "Construction Manager's Authorized Representative"). The Construction Manager may, from time to time, authorize other employees to act as the Construction Manager's Authorized Representative. Such authorization shall, in writing, identify the individual employee, and the extent of their authority to bind the Construction Manager. Unless so authorized, Construction Manager's Superintendent and other Project personnel shall not be deemed Construction Manager's Authorized Representative and shall have no authority to issue any Change Order or an SCD, nor shall anyone other than the Construction Manager's Authorized Representatives be authorized to amend, modify, alter or change this Agreement in any manner. The failure of Trade Contractor to secure a compliant Change Order or SCD shall be a complete waiver by Trade Contractor to any Change Claim by Trade Contractor, including but not limited to, any claim for any additional amounts, costs, payments, compensation, extras, repairs to others work, extensions, overhead, profit, or any other remedy or relief. Trade Contractor represents and warrants that all Work shall be performed and timely completed by Trade Contractor for the Lump Sum Amount set forth in the Contract Sum in Article 3 of this Agreement unless only a Change Order or SCD has been issued pursuant to this Article 8. Neither the conduct of the parties nor the statement, action, promise or activity of any representative of the Construction Manager shall be deemed a waiver, modification, release, excuse or change to the absolute requirement for written a Change Order or SCD to adjust the Contract Sum or Time.

ARTICLE 9

TRADE CONTRACTOR RESPONSIBILITIES

9.1 The Trade Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the Work by the Construction Manager, Architect, and the Owner, or their authorized representatives. The Trade Contractor shall, within twenty-four (24) hours for emergencies involving life-safety, and within forty-eight (48) hours for non-emergency life-safety matters, of receipt of notice from the Construction Manager, proceed to promptly and continuously, until complete, take down all portions of the Work and remove from the grounds and Project site all materials, equipment and/or Work which the Construction Manager, Architect, the Owner, or their authorized representatives shall fail to approve or shall condemn as unsound, defective, improper, non-compliant, or in any way failing to conform strictly to the Contract Documents or this Agreement. The Trade Contractor shall at its own expense promptly repair, remedy, replace and correct such Work regardless of whether Trade Contractor disagrees with the reason for such Work being condemned or rejected. Further, the Trade Contractor shall at its own expense repair and remedy all work damaged or destroyed thereby.

9.2 The Trade Contractor agrees, in the performance of this Agreement, to comply with all applicable federal, state, municipal, and local laws, ordinances, codes and governing regulations, to pay all costs and expenses required thereby; to pay all fees, charges, and assessments, and to pay all fringe and other benefits required by Agreement or law. If the Trade Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, the Trade Contractor shall promptly notify the Construction Manager in writing, and necessary changes shall be accomplished by appropriate modification. If the Trade Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations without such notice to the Construction Manager, he shall assume full responsibility therefore and shall bear all costs attributable thereto. The Trade Contractor shall comply with all applicable federal, state, municipal and local employment and immigration laws and shall act in accordance with all rules, regulations and procedures that may be required to ensure full compliance with all such laws and, if requested or required by Construction Manager, Architect, and/or Owner. At all times, upon request, the Trade Contractor shall certify in writing that it is in compliance with all such laws. The Trade Contractor shall timely procure and pay for any necessary or required licenses, tax, fine, fee, or permit related to its Work, and shall reimburse and save the Construction Manager and Owner harmless from any violation, fine, tax, fee, proceeding, claim, cost or issue associated with any such laws. The Trade Contractor expressly acknowledges and agrees to adhere to, and implement as part of its safety program, Construction Manager's Safety Non-Negotiables, a copy of which has been provided to Trade Contractor.

9.2.1 The Trade Contractor shall pay all sales, use, consumer, and other similar taxes for the Work or portions thereof furnished or provided by the Trade Contractor which are legally required at the time bids or proposals are received, whether or not yet effective. Such taxes are included in the Trade Contract Sum.

9.2.2 In the event of a breach of this Section 9.2 (including any of its sub parts) results in an assessment against and/or payment by either the Owner or the Construction Manager, any amount reasonably required to resolve the claim shall be deducted by the Construction Manager. If the amount of such unpaid taxes exceeds the total of the unpaid Trade Contract Sum and other amounts due to the Trade Contractor, the Trade Contractor agrees to pay the amount of such excess to the Construction Manager.

9.2.3 State and local governments may require foreign contractors post a bond to assure payment of expenses allocated in this Section 9.2. Providing such bonds and the cost thereof are included by the Trade Contractor in the Trade Contract Sum.

9.3 The Trade Contractor shall pay all royalties and license fees. Further, the Trade Contractor shall defend all lawsuits, proceedings, issues, or claims, including attorneys' fees, for any alleged or asserted infringement of any patent, intellectual, or other property right, and shall save the Owner and Construction Manager harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, unless otherwise addressed in the Contract Documents or if the Trade Contractor has reason to believe or should have known that the design, process or product specified is an infringement of a patent, intellectual or property right. In the event the Trade Contractor has reason to believe or should have known that a design, process or product specified is or may be an infringement of a patent, intellectual, or other property right, then the Trade Contractor shall be responsible for such loss, damages and attorneys' fees, unless Trade Contractor first provided prompt written notice of all such information to the Construction Manager.

9.4 In the event the Trade Contractor, at any time, should:

- (a) Refuse, fail or neglect to supply sufficient and properly skilled workers, supervision, equipment, and materials of the proper quality;
- (b) fail in any respect to prosecute the Work timely, in compliance with this Agreement;
- (c) fail in the performance of any obligation or duty of this Agreement;
- (d) become insolvent, enter bankruptcy either voluntarily or involuntarily, have a receiver appointed or make an assignment for the benefit of creditors;
- (e) materially change its financial condition, transfer any material assets, change control or management without Construction Managers' prior written consent;
- (f) become (or if any of its essential personnel becomes) the subject of criminal, debarment or other regulatory proceedings, which in Construction Manager's sole judgment undermines Trade Contractor's ability to perform the Work;
- (g) enter into any unauthorized assignment or delegation of this Agreement without Construction Manager's prior written consent;
- (h) have any lien, encumbrance, bond claim, dispute, delay or other claim asserted, filed or threatened under Trade Contractor's scope of Work or that arises out of Trade Contractor's involvement in the Project, and Trade Contractor has not promptly removed, satisfied or paid same;
- (i) fail to remove or otherwise remedy any defective, non-compliant or unapproved Work; and/or
- (j) fail to properly remedy a noticed violation of this Agreement.

Each above event shall constitute a "breach" of this Agreement.



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9.4.1 In the event of a breach, Construction Manager after forty-eight (48) hours written notice to the Trade Contractor, shall have the right, but not the obligation, to exercise any and all remedies under this Agreement in addition to those available at law or in equity, or both, including without prejudice to any other remedy, the following contractual remedies:

- (a) Investigate the cause of such breach or failure and correct same in any way or manner whatsoever, including, but not without limitation to, the supplementation of Trade Contractor's forces, and deduct all such corrective costs, expenses, losses, delay damages, and any other Damages as provided in this Agreement from Trade Contractor's Contract Amount; and/or
- (b) Take charge of and complete the performance of this Agreement and the Trade Contractor's Work without termination of this Agreement, and in such event shall be permitted to take possession of all Trade Contractor's materials, equipment, tools and appliances for such Work, and deduct all such corrective, repair, remediation or completion costs, expenses, delay damages, and any other Damages as provided in this Agreement from Trade Contractor's Contract Amount; and/or,
- (c) Terminate further performance by the Trade Contractor under this Agreement without further notice or payment, and renegotiate and re-execute a contract or contracts for the completion of the Trade Contractor's Work with such persons, firms or companies as may be appropriate in the opinion of the Construction Manager, and in such event, deduct any and all costs, damages, expenses, completion costs, remediation expenses, delay damages, and any other damages as provided in this Agreement from Trade Contractor's Contract Amount; and/or,
- (d) Allow the Trade Contractor to continue performance and accrue and accumulate any and all costs, expenses, delay damages or other Damages as provided in this Agreement, and deduct same from Trade Contractor's Contract Amount; and/or,
- (e) Pursue any and all other remedies that Construction Manager may have at law or in equity.

In the event the Trade Contractor should violate any term or provision of this Agreement, then Trade Contractor, and its Surety, if applicable, shall be deemed to be liable to the Construction Manager for any and all resulting Damages, losses, costs, expenses, incidental damages, consequential damages, indirect damages, completion damages, correction damages, remediation damages, clean-up costs, repairs, delay damages, including but not limited to liquidated damages, extended field office overhead, extended home office overhead, additional field condition costs, additional supervision, as well as all attorneys' fees (including but not limited to the costs of the Construction Manager's in-house counsel), and such other damages or remedies as may be available in this Agreement, at law or in equity (herein collectively referred to as "Damages"). In the circumstances where Construction Manager has undertaken any involvement in the repair, correction, or completion of Trade Contractor's Work, then in addition to the above and to the extent not inconsistent with the Contract Documents, the Construction Manager's contract damages shall also be deemed to include all administrative overhead costs in an amount not less than those percentages for overhead & profit stated in Article 12.1 herein.

9.4.2 In addition to Construction Manager's rights and remedies as set forth in this Agreement, in the event the Trade Contractor's unpaid Contract Balance is not sufficient to fully pay for all such Damages, then in that event, Trade Contractor, and its Surety, if applicable, shall promptly pay upon demand Construction Manager for any deficiency so that all such Damages are fully paid. In addition, the Construction Manager shall have the right to withhold payment to the Trade Contractor in the event that the Trade Contractor has been declared in default or breach of this Agreement, or should a bona fide dispute exist regarding the amount due Trade Contractor, notwithstanding whether the Construction Manager has received payment from the Owner for any labor, services and materials furnished by Trade Contractor. In the event of such declaration of default, breach or bona fide dispute which is not cured or remedied by Trade Contractor, or should the Construction Manager terminate the Trade Contractor, then all further payments under this Agreement shall cease until all Trade Contractor's Work has been fully remedied and completed. If the unpaid balance of the Contract Sum exceeds all Damages, as defined in Section 9.4.1, then such excess should be paid to the Trade Contractor after all Trade Contractor's Work has been remedied and completed and all material claims or disputes resolved, and subject to all other terms, conditions and provisions of this Agreement. For the avoidance of doubt, a bona fide dispute shall include, but not be limited to, any breach described in Section 9.4 of this Agreement.

9.4.3 In the event that a Termination for Cause is not upheld by a properly empowered judicial or arbitral authority, then the Termination for Cause shall be deemed a Termination for Convenience and construed under Section 9.4.4 hereof.

9.4.4 Notwithstanding the above paragraph, the Construction Manager reserves the right to terminate this Agreement for its convenience upon written notice to the Trade Contractor. In such instance the Trade Contractor will be paid its share of the Contract Amount proportionate to the percentage of its Work completed and other reasonable cancellation costs incurred as a result of said termination less any amounts previously paid or for any Damages caused by any breach. No payments shall be made for anticipated overhead and profit. Prior to making any payments under this clause, the Construction Manager shall have the right to audit the records of the Trade Contractor.

9.5 The Trade Contractor agrees to adhere to the federal occupational safety and health act, state and local safety regulations and the Construction Manager's safety and health program so as to avoid injury or damage to persons or property, and to be directly responsible for damage to persons and property resulting from failure to do so.

9.6 In the event the Trade Contractor, after a twenty-four (24) hour written notice from the Construction Manager, fails to take corrective action to insure compliance with said safety regulations or removal of rubbish and debris resulting from his Work, the Construction Manager shall undertake these obligations and charge the cost of same to the Trade Contractor's account without further notice to the Trade Contractor.

9.7 The Trade Contractor agrees to immediately notify the Construction Manager's representative on the jobsite of any accident, injury or damage to any persons or property on the Project site or related to the Project, and shall promptly provide the Construction Manager's representative a complete copy of all accident reports, photographs and videotapes and other documentation related to such accident in forms acceptable or requested by the Construction Manager. All such reports shall be signed by the Trade Contractor or his authorized representative, and shall be submitted to the Construction Manager no later than five (5) calendar days from the date of such occurrence.

9.8 The Trade Contractor shall procure its materials from such sources, and employ such labor subject to contract terms and conditions in order to ensure harmonious labor relations on the site and prevent strikes or labor disputes by its employees or other trade employees. The Trade Contractor, in the event of a labor dispute including but not limited to strikes, shall take whatever action is required in order to prevent the disruption, delay, interruption, or adverse impact of any trade's work on the Project site.

9.9 The Trade Contractor will not assign this Agreement, nor any moneys due or to become due under this Agreement, nor any Damages, claims, suits, rights or interests under this Agreement, nor sublet the whole or any part of the Work to be performed hereunder, without the prior written consent of the Construction Manager. In the event the Trade Contractor has failed to secure such prior written consent of the Construction Manager, then any such assignment or delegation of performance shall be deemed invalid, void and unenforceable. Further, the Trade Contractor shall not sell, change, assign, escrow, or transfer, directly or indirectly, any ownership, stock, membership or control of the Trade Contractor greater than a ten percent (10%) cumulative interest during the duration of the Project, without the prior written consent of the Construction Manager. The foregoing sentence shall not apply if Trade Contractor is a publicly traded company regulated by, and subject to the oversight of, the Securities & Exchange Commission. Any violation of this section shall be a material breach of this Agreement. In the event that Construction Manager provides such consent, any assignee hereunder shall strictly comply with all the requirements of this Agreement, and further Trade Contractor shall also remain fully liable for the Trade-Subcontractor's or other assignee's obligations under this Agreement, unless otherwise released in writing by Construction Manager. The Trade Contractor acknowledges that this Trade Contract may at any time, and without prior notice or further consent, be assigned by the Construction Manager including, without limitation, as may be directed by the Owner pursuant to the terms of the Prime Contract, or by agreement between the Construction Manager and the Owner (or any lender, Owner's agent, or other party authorized to act on the Owner's behalf).



9.10 The Trade Contractor agrees that all disputes concerning the jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being done. The Trade Contractor shall be bound by, and shall abide by, all such adjustments and settlements of jurisdictional disputes, whether or not the Trade Contractor is signature bound by the Agreement establishing the impartial jurisdictional disputes board and/or its successors. The Trade Contractor agrees not to cause a work stoppage due to the jurisdictional assignment of work.

9.11 The Trade Contractor shall submit to the Construction Manager upon request, copies of orders placed for the various materials required for the Project or authentic stock lists if such material is normally a stock item. Order copies need not reflect prices but shall indicate type of material, quantity, vendor name, and address, etc. The Trade Contractor shall be required to submit to the Construction Manager a monthly material status report, or more often if required by the Construction Manager, as a prerequisite for the monthly progress payment. The Trade Contractor shall notify the Construction Manager immediately upon learning of a change of status of any material, equipment, or supplies.

9.12 The Trade Contractor shall continuously and adequately protect all Work from damage due to his Work and will immediately replace or pay for the replacement of all damaged Work at its own expense and cost.

9.13 The Trade Contractor agrees to maintain experienced and skilled workers and the necessary materials, supplies, tools and equipment to meet the requirements of this Agreement and to maintain the Construction Manager's Schedule. The Trade Contractor shall carry on its Work promptly and efficiently and at a speed that will not cause any delay. In the event the Trade Contractor falls behind in the progress of his Work, in the sole judgment of the Construction Manager, then the Trade Contractor agrees to take such steps as are necessary, in the judgment of the Construction Manager, to improve the rate of progress of Trade Contractor's Work to comply with the requirements of this Agreement, including but not limited to, increasing the skill and supervision of its workers, working sufficient overtime hours, adding shifts of its workforce, working additional days, and/or increasing its workforce to meet such schedules, milestones and requirements of this Agreement at no extra cost to the Construction Manager or Owner. In addition, if requested by the Construction Manager, the Trade Contractor shall promptly, and within forty-eight (48) hours of such request, provide to the Construction Manager for approval a remediation and recovery schedule demonstrating the manner in which the required rate of progress will be regained and attained by Trade Contractor. Failure of the Trade Contractor to immediately comply with this paragraph, the Construction Manager's scheduling requests, its approved remediation schedule, or to improve the rate of progress as requested by the Construction Manager, shall be a material breach of this Agreement. The Construction Manager shall be entitled to all rights, remedies and Damages as set forth in this Agreement, as well as any other remedies at law or in equity. Permitting the Trade Contractor to continue performance after breach of this or any other provision of this Agreement shall not be deemed a waiver, release or discharge of any right, claim, interest or remedy against the Trade Contractor.

9.13.1 It is expressly agreed that time is of the essence of this Agreement, and that the payment of the consideration herein expressed to be paid by Construction Manager is executory and strictly conditioned upon timely completion of Trade Contractor's Work and proper performance of Trade Contractor's obligations under this Agreement. Unless otherwise agreed by Trade Contractor and Construction Manager, Trade Contractor shall bear the risk of loss of any of Trade Contractor's Work (including property intended to become a part of its Work) and shall insure it on a 100% replacement cost basis, until such Work or property is delivered to the project site and/or accepted by the Construction Manager.

9.14 The Trade Contractor agrees to employ competent administrative, supervisory, and field personnel to accomplish the Work, including layout, engineering, preparation and checking of shop drawings. If required, the Trade Contractor shall substantiate this employment of competent personnel to the Construction Manager's satisfaction before initiating any Work.

9.15 The Trade Contractor shall insure that all construction tools, equipment, temporary facilities, and other items used in accomplishing the Work, whether purchased, rented, or otherwise provided by the Trade Contractor or provided by others, are in a safe, sound, and good condition, must be capable of performing the functions for which they are intended and must be maintained in conformance with applicable laws and regulations.

9.16 Construction Manager shall not be liable to the Trade Contractor for any delay, loss of efficiency, interruption, disruption, loss of productivity or the like (herein "delay") resulting from: (1) fire, weather, flood, wind, lightning, storm, earthquake, rain, acts of God or other causalities whether by man or nature; (2) any act, neglect or fault of the Owner, Architect, or Engineer, or Construction Manager, or any of their representatives, agents, employees, independent contractors or trade contractors; (3) any delay in transportation or availability of any materials involved in the Project to be ordered by Trade Contractor or its subs or vendors; (4) any labor disputes, strikes, riots, or other labor issues involving Trade Contractor's or its subcontractor's work force; (5) any act of terrorism or threats of terrorism; or (6) any other causes.

9.16.1 Further, Trade Contractor's sole and exclusive remedy shall be a reasonable, but uncompensated, extension of time as reasonably determined by Construction Manager for Trade Contractor to complete its Work pursuant to this Agreement.

9.16.1.1 Notwithstanding Section 9.16.1, and as the sole exceptions thereto, Trade Contractor may be entitled to certain compensation for delays subject to the following strict conditions precedent:

- a. the Owner agrees to, and actually, pays Construction Manager for such delay to Trade Contractor; or
- b. separate trade contractor(s) either agree to pay, or Construction Manager assesses and recovers payment from such separate trade contractor(s) for such delay to Trade Contractor;

In the event of either (a) or (b), the Trade Contractor's sole and exclusive remedy for compensation for such delay shall be limited to the amount actually paid to Construction Manager specifically for Trade Contractor delay "costs" (which are defined as Trade Contractor's out of pocket costs and expenses without markup, profit, loss or other delay damages ("Costs")).

9.16.1.2 Notwithstanding anything to the contrary in this Agreement, in the event that the Prime Contract precludes damages for delay, Trade Contractor understands and acknowledges that Trade Contractor shall also not be entitled to recover any compensation for delays as precluded by the Prime Contract.

9.16.2 Any claim by Trade Contractor for compensation or time extension, in each case, shall be subject to the additional strict condition precedents:

- a. the Trade Contractor shall within three (3) business days of the beginning of such delay serve Construction Manager with a separate written letter titled "Notice of Delay and Request for Extension of Time" (herein "Delay Extension Request"); such Delay Extension Request shall not be deemed valid or compliant if contained in any daily log, meeting minutes, e-mail or other document other than a Delay Extension Request; and
- b. such Delay Extension Request shall include a description of the specific event that is the basis for such an extension of time, the cause of the alleged delay, an estimate of the period of delay, and a general description and estimate of all costs Trade Contractor claims it has or will suffer from such delays.



Gilbane Building Company

Trade Contractor Agreement

In the event the Trade Contractor fails to timely, fully and properly serve Construction Manager with such written Delay Extension Request as set forth in this Section, then the Trade Contractor shall have waived and released any entitlement to an extension, compensation or costs, and any other right or remedy. Subject to the above terms and conditions precedent, it is expressly agreed that Trade Contractor's claim for such delays shall also be strictly limited to its Costs. Under no circumstances shall Trade Contractor be entitled to any extension of time, cost, compensation, or other remedy to the extent that Trade Contractor caused or contributed, in whole or in part, to such delay, or to the extent Trade Contractor could have reasonably avoided or mitigated such delay or costs.

9.16.3 Nothing in this Article 9 shall be construed to limit the Construction Manager's ability to compensate, settle claims, or otherwise mitigate delay claims asserted or threatened by third parties (including but not limited to a separate trade contractor) for the delays caused by the Trade Contractor.

9.17 Right-To-Know Laws. Each Trade Contractor is required to implement the provisions of the right-to-know law, if any, as enacted by the state in which the Work is being performed. Before using on site any material listed in the right-to-know substance list, each Trade Contractor will furnish the Construction Manager a copy of the material safety data sheet for that substance.

9.18 In the event the Trade Contractor employs independent contractors, as well as payroll labor, to discharge its obligations hereunder, the Trade Contractor acknowledges and understands that it does so at its own risk and that federal, state and/or local agencies may dispute the independent contractor status and assess penalties, fines, and costs should there be a determination to reclassify such workers. In that event, the Trade Contractor agrees that it will defend, indemnify and hold the Construction Manager and the Owner harmless from any fines, costs, Damages, penalties, attorneys' fees, and causes of action, including without limitation, personal injury or property damage, arising out of or relating in any way to such a determination.

9.19 Trade Contractor shall inspect the Work Site or Job Site and all surfaces as well as all conditions, areas or structure(s) related to its Work, and all Work performed by others which relates to Trade Contractor's Work, prior to performance of its scope of Work, and Trade Contractor shall notify Construction Manager in writing immediately of any deficiencies or problems that would adversely affect Trade Contractor's Work, the quality and timeliness of its Work, the finished product, and/or in any way adversely affect the Project site. By commencing Work, Trade Contractor accepts full responsibility for all surfaces, areas and structure(s) which interface with its Work, and further represents that it has thoroughly examined the Contract Documents, the Project site, the Construction Manager's Schedule, or amendments thereto, and all conditions, and has determined that he accepts all conditions and matters effecting the proper and timely execution of the Work. Failure to timely provide written notice to Construction Manager of such deficiencies or problems before commencing Work shall be deemed a complete waiver and/or release against any Work, problem or condition affecting its Work or the Work performed by others, and shall also be a waiver for any related claims by the Trade Contractor arising therefrom.

9.20 **TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE TRADE CONTRACTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE TRADE CONTRACTOR MAY BE A PARTY ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR THE ENFORCEMENT THEREOF. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE TRADE CONTRACTOR AND THE TRADE CONTRACTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE TRADE CONTRACTOR FURTHER REPRESENTS THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH INDEPENDENT LEGAL COUNSEL. NOTWITHSTANDING THE FOREGOING, IN THE EVENT ANY LITIGATION HEREUNDER INCLUDES THE OWNER AS A THIRD PARTY WHETHER BY IMPEALER OR OTHERWISE, AND THE OWNER HAS NOT WAIVED RIGHT TO TRIAL BY JURY, THIS PROVISION SHALL BE DEEMED TO BE OF NO FORCE AND EFFECT.**

9.21 This Agreement and all disputes arising out of this Agreement shall be governed by (a) the law specified for such disputes in the Contract Documents, or, if none is specified, (b) the law of the place where the Project is located.

9.22 Notwithstanding the event of any claim, dispute, or other matter in question arising out of or relating to this Agreement or the breach thereof, the Trade Contractor shall carry on the work and maintain the Substantial Completion Date and the Construction Manager shall continue to make payments not subject to a bona fide dispute in accordance with this Agreement.

ARTICLE 10

CONSTRUCTION MANAGER RESPONSIBILITIES

10.1 The Construction Manager shall be bound to the Trade Contractor by the terms of this Agreement. To the extent that the provisions of the Prime Contract apply to the Work of the Trade Contractor as defined in this Agreement, the Construction Manager shall assume toward the Trade Contractor all the obligations and responsibilities that the Owner, by those documents, assumes toward the Construction Manager. The Construction Manager shall have the benefit of all rights, remedies, and redress against the Trade Contractor which the Owner, by those documents, has against the Construction Manager. Where any provision of the Prime Contract is inconsistent with any provision of this Agreement, this Agreement shall govern.

10.2 The Construction Manager shall not give instructions or orders directly to employees or workers of the Trade Contractor, except to persons designated as authorized representatives of the Trade Contractor.

ARTICLE 11

EQUAL OPPORTUNITY

11.1 During the performance of this Agreement, the Trade Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Trade Contractor will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin. The Trade Contractor will comply with all provisions of Executive Order No. 11246, Section 503 of the Rehabilitation Act of 1973, as Amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as Amended, (38 U.S.C. §§ 4212, *et seq.*) and their implementing regulations at 41 CFR Chapter 60.

11.2 The E.E.O. Certificate of Assurance (Exhibit A) is attached hereto and incorporated herein as if made a part hereof.

ARTICLE 12



Gilbane Building Company

Trade Contractor Agreement

ALTERATIONS

12.1 The overhead and profit allowable under this Agreement shall not exceed the overhead and/or profit markup or rate set forth in the Contract Documents applicable to Trade Contractors, and to the extent not set forth in the Contract Documents or not involving an Owner Change, then subject to the condition precedent that the Trade Contractor shall be issued a Change Order, the overhead and/or profit markup or rate shall not exceed the following amounts applied to the net increase only:

15% overhead and profit combined on work performed by its own forces.

5% only for work performed by lower-tier subcontractors.

12.2 Retainage shall be 8% withheld on labor per the STATE General Conditions.

12.3 Signed Parent Guaranty Required

12.4 In accordance with Article 4.4 of this Agreement, liquidated damages are applicable to this agreement at \$15,000 per day, and \$3,750 per day for Punchlist Milestone. Trade Contractor shall have all rights and obligations towards Construction Manager that Construction Manager has pursuant to Owner. Trade Contractor shall only be assessed that portion of Liquidated Damages which are assessed to the Construction Manager to the extent such damages are assessed due to the extent of Trade Contractor's actions or inactions.

ARTICLE 13

COMPLETE AGREEMENT

13.1 This Agreement, together with all documents, specifications, drawings, incorporated herein by reference, constitutes the entire Agreement between the Construction Manager and Trade Contractor. There are no terms, conditions, or provisions, either oral or written, between the parties hereto, other than those contained herein. This Agreement supersedes any and all written representations, inducements, or understandings of any kind or nature between the parties hereto, relating to the particular Project involved herein.

13.2 The said parties for themselves, their heirs, successors, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

13.3 All terms, conditions, stipulations, covenants, promises and agreements contained in this Agreement shall be considered severable in the event one or more of them shall be determined hereafter by a court of competent jurisdiction to be invalid. The Construction Manager and the Trade Contractor's express intent is for this Agreement, except for any portion thereof so declared invalid, to remain valid, binding and in full force. Further, to the extent the Court determines that any such term, covenant or provision, or part thereof, is invalid or unenforceable, then the Court is directed to reform such provision to provide an enforceable provision which is in conformity with the intent of the original provision and the global intent of this overall Agreement.

13.4 It is understood and agreed by both Parties that any attempt by either Party to amend, modify or change this Agreement shall not be binding or enforceable unless and until and as a condition precedent the Construction Manager has affirmatively agreed to each such modification(s) or amendment in writing by an authorized representative of the Construction Manager.

ARTICLE 14

ORDER OF PRECEDENCE

14.1 In the event of any conflict or discrepancy in the provisions of the Contract Documents, the documents shall be interpreted on the basis of the following order or priority:

- .1 Agreement between Construction Manager and Trade Contractor
- .2 Agreement between Owner and Construction Manager
- .3 Scope Review Meeting Minutes (if any)
- .4 Supplement, with later date having greater priority (if any)
- .5 Gilbane Building Company Proposal Form (if any)
- .6 Trade Contract Conditions
- .7 Specifications
- .8 Drawings, large scale details and/or schedules
- .9 Drawings, small scale

ARTICLE 15

DISPUTE RESOLUTION PROCESS

15.1 Trade Contractor and Construction Manager (the "Parties") agree that any and all disputes, differences, claims, or issues arising from this Agreement or involving the Project, including further any party seeking any payment, cost, expense, compensation, loss, time, adjustment, change, request for equitable adjustment, delay, acceleration, damage, remedy, recover or relief of any type or nature shall be collectively referred to as a "Claim" in this Article of the Agreement. Trade Contractor and Construction Manager agree that any Claim shall be subject to mediation and binding arbitration pursuant to the terms, conditions and procedures in the Dispute Resolution Process set forth in the Trade Contract Conditions incorporated into and made a part of this Agreement.



Gilbane Building Company

Trade Contractor Agreement

Diverse Business Participation

Name	Classification	Amount

Cost Distribution

Job	Phase /Category Code	Description	Amount
J09587.000	01.21A.210000.X TC	L- Fire Suppression	\$407,152.00
J09587.000	01.21A.210001.X TC	M- Fire Suppression	\$603,648.00
J09587.000	01.22A.220000.X TC	L- Plumbing	\$876,537.20
J09587.000	01.22A.220001.X TC	M- Plumbing	\$1,314,805.80
J09587.000	01.23A.230000.X TC	L- HVAC	\$3,861,320.00
J09587.000	01.23A.230001.X TC	M- HVAC	\$6,001,580.00

Attachments

Number	Title	Date	Description
00221093	J09587.000-0007 State Subcontract Form	10/11/2022	Original Version

EXHIBIT A

The person(s) whose signature(s) appear(s) on the Trade Contract Agreement with Gilbane Building Company is/are authorized to sign these certificates, and to commit the Trade Contractor to all provisions within Exhibit A. Trade Contractor’s failure or refusal to comply with this Exhibit A shall be considered a material breach of the Trade Contract Agreement.

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Exhibit A-1: Trade Contractor’s Certificate of Equal Employment Opportunity Compliance

Exhibit A-2: Trade Contractor’s Acknowledgement of Gilbane Building Company’s Zero-Tolerance Harassment Policy

Exhibit A-3: Supplier Code of Conduct

Exhibit A-4: Workforce Diversity Commitment



Gilbane Building Company

Trade Contractor Agreement

EXHIBIT A-1:

TRADE CONTRACTOR'S CERTIFICATE OF EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

The Trade Contractor agrees and certifies, unless otherwise exempt, that it is in compliance with the applicable requirements of Executive Orders No. 11246, 11701 and 11758 as amended, or will take steps to comply with such requirements prior to acceptance of any contract or purchase order from Gilbane Building Company ("the Company"). This agreement and certificate shall form a part of, and be deemed incorporated in, each order submitted to you for services or materials exceeding the applicable amount and so long as required by Executive Orders No.11246, 11701 and 11758, as amended, and regulations issued thereunder by the Office of Federal Contract Compliance.

During the performance of this contract, the Trade Contractor agrees as follows:

1. EQUAL OPPORTUNITY CLAUSE (Applicable to contractors with \$10,000 or more in contracts under Executive Order No. 11246)

- 1.1. The Trade Contractor will not discriminate against any employee or applicant because of race, color, religion, sex, sexual orientation, gender identity or national origin. The Trade Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Trade Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 1.2. The Trade Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Trade Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
- 1.3. The Trade Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Trade Contractor's commitments under Section 202 of Executive Order No.11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 1.4. The Trade Contractor will comply with all provisions of Executive Order No.11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- 1.5. The Trade Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 1.6. In the event of the Trade Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Trade Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may also be imposed and remedies invoked as provided in Executive Order No.11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 1.7. The Trade Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 Executive Order No.11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Trade Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance; providing, however, that in the event the Trade Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Trade Contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. CERTIFICATE OF NON-SEGREGATED FACILITIES (Applicable to contractors with \$10,000 or more in contracts under Executive Order 11246)

Trade Contractor does not maintain or provide for its employees any segregated facilities at any of its establishments and does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Trade Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

Trade Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, "segregated facilities" mean any waiting rooms, work areas, rest rooms and wash rooms, restaurants, and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

Trade Contractor further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NON-SEGREGATED FACILITIES



Gilbane Building Company

Trade Contractor Agreement

A certificate of non-segregated facilities must be submitted prior to the award of a subcontract exceeding \$10,000 that is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

3. AFFIRMATIVE ACTION COMPLIANCE PROGRAM (Applicable to contractors with 50 or more employees and \$50,000 or more in contracts under Executive Order 11248)

Trade Contractor agrees to develop a written Affirmative Action Compliance Program for each of its establishments as required by 41 CFR 6-1.40.

4. EMPLOYERS INFORMATION REPORT (Applicable to contractors with 50 or more employees and \$50,000 or more in contracts under Executive Order 11246)

Trade Contractor has filed: Standard Form 100, entitled "Equal Employment Opportunity Employer Information Report" (EEO-1); or EEOC Form 164, State and Local Government Information (EEO-4); or EEOC Form 68A and B, Elementary-Secondary Staff Information (EEO-5); or EEOC Form 221, Higher Education Staff Information (EEO-6), as required by 29 CFR 1602.3 and 41 CFR 6-1.7.

5. EMPLOYMENT OF VETERANS (Applicable to contractors with \$10,000 or more in contracts under Executive Order 11701)

Trade Contractor agrees and certifies that it will comply with the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected Veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected Veterans.

6. EMPLOYMENT OF INDIVIDUALS WITH DISABIITIES (Applicable to contractors with \$2,500 or more in contracts under Executive Order 11758)

Trade Contractor agrees and certifies that it will comply with the Affirmative Action Clause set forth in 41 CFR 60-741.4 to promote affirmative action in the employment and advancement of qualified individuals with disabilities. This contract clause is incorporated herein by reference.



Gilbane Building Company

Trade Contractor Agreement

EXHIBIT A-2:

TRADE CONTRACTOR’S ACKNOWLEDGEMENT OF GILBANE BUILDING COMPANY’S ZERO-TOLERANCE HARASSMENT POLICY

1. Trade Contractor acknowledges and understands that Gilbane Building Company does not tolerate unlawful harassment, including sexual harassment or harassment on the basis of age, citizenship status, ancestry, color, religious creed, creed, denial of family and medical care leave, disability including HIV and AIDS, marital status, including registered domestic partners, medical condition, pregnancy, childbirth and other pregnancy-related conditions, genetic information, military and veteran status, including protected veteran status, national origin, race, sex, gender, gender identity, gender expression, transgender status, sexual orientation and/or any other categories or status that are protected by applicable federal, state or local law. In addition, Gilbane Building Company will not tolerate any type of bullying and/or inappropriate conduct on the Project.
2. Trade Contractor agrees that it will not tolerate unlawful harassment, including sexual harassment or harassment on the basis of age, citizenship status, ancestry, color, religious creed, creed, denial of family and medical care leave, disability including HIV and AIDS, marital status, including registered domestic partners, medical condition, pregnancy, childbirth and other pregnancy-related conditions, genetic information, military and veteran status, including protected veteran status, national origin, race, sex, gender, gender identity, gender expression, transgender status, sexual orientation and/or any other categories or status that are protected by applicable federal, state or local law. In addition, Trade Contractor will not tolerate any type of bullying and/or inappropriate conduct on the Project.
3. Trade Contractor is obligated to uphold Gilbane Building Company’s Zero Tolerance of harassment, bias and hate, including any form of vandalism, physical destruction of property, defacement in the form of any graffiti (e.g., images drawn, sprayed, or etched, stickers, non-work-related posters, etc.) on temporary facilities or in the general workplace. Graffiti that exhibits harassment, hate or intolerance that is motivated by bias against a person’s race, religion, disability, sexual orientation, ethnicity, gender, or gender identity will be investigated and may be reported to the authorities for legal action where appropriate. All personnel on the Project will be required to acknowledge this policy statement as part of the Project orientation.
4. Trade Contractor understands, acknowledges and agrees that, if any of its personnel (or the personnel of any of its vendors, suppliers, subcontractors, etc.) are found to be in violation of Gilbane Building Company’s Zero Tolerance policy, such personnel may be immediately removed from the work site, may no longer be permitted to work on the Project under this Trade Contract Agreement and may be permanently banned from all Gilbane Building Company projects. Trade Contractor shall not be entitled to reimbursement for any additional costs or any extensions of time due to Gilbane Building Company’s enforcement of this Zero Tolerance Policy. Further, should any removed personnel bring any civil action against Gilbane Building Company, its parents or subsidiaries related to its enforcement of this policy, Trade Contractor shall be fully responsible for any such claims and shall be obligated to defend, indemnify and hold Gilbane Building Company harmless from any and all such claims.



EXHIBIT A-3:

GILBANE BUILDING COMPANY’S SUPPLIER CODE OF CONDUCT

Gilbane Building Company adheres to the highest standards of ethical and honest conduct, and we are guided by the following Core Values:

- Integrity
- Tough-mindedness
- Teamwork
- Dedication to Excellence
- Loyalty
- Discipline
- Caring
- Entrepreneurship

Likewise, we expect every subcontractor, vendor, consultant or other contractor to Gilbane Building Company (individually “you” and collectively “Supplier” or “Suppliers”, each of which is deemed to include your officers, director, employees, agents and representatives and your sub-tier contractors or consultants at every level in connection with the Agreement between you and Gilbane Building Company) to do the same. Consistent with that expectation, Gilbane Building Company requires Suppliers’ strict compliance with the requirements of this Supplier Code of Conduct, the terms of which are hereby incorporated by reference in your contract with Gilbane Building Company as material terms. Gilbane Building Company also requires you to incorporate this Supplier Code of Conduct in every sub-tier agreement that you execute in connection with your Agreement with Gilbane Building Company.

Reading and understanding this Supplier Code of Conduct is essential to the proper performance of your company’s Agreement with Gilbane Building Company. If you believe a violation of the Supplier Code of Conduct has occurred, you have a duty to report your concerns using the procedures outlined below. All reports will be promptly investigated, and Gilbane Building Company will receive reports and hold such reports in the strictest confidence whenever possible. Gilbane Building Company prohibits retaliation against any person making a good faith report concerning matters addressed within this Supplier Code of Conduct.

There are multiple federal, state and local laws and regulations that specifically address prohibited conduct and set forth both corporate and personal sanctions for violations of those laws. Even if not expressly stated in one or more of these laws or regulations, a violation may provide the factual basis for a civil or criminal violation of one or more applicable laws, for termination of your contract for default, or for other sanctions. The Project Owner may also have contractual requirements applicable to Suppliers at the Project. Whether expressly stated or not, as between or among this Supplier Code of Conduct, the Project Owner’s contractual requirements, federal state and local laws and regulations, the most stringent requirement will apply to Supplier.

You are expected to report any actual or suspected violations of the Supplier Code of Conduct. To report actual or suspected violations of this Supplier Code of Conduct, or if you have a question, you may contact the Gilbane Building Company Ethics Hotline at **1-844-240-0004** (see Section VI below for a complete listing of Toll-Free numbers available by country). To the fullest extent possible, your report will be kept in confidence.

Fundamental Principles

1.1 Safety, Environmental Protection, and Regulatory Compliance

Suppliers must comply with all environmental, health and safety laws, regulations and standards applicable to the project, job-site, or office location. It is each Supplier’s responsibility to ensure that its employees and its sub-tier contractors or consultants at every level understand and comply with the laws, regulations and policies that are relevant to their specific job functions. Failure to comply with laws, regulations and standards can result in civil and criminal liability against you and/or your employees.

1.2 Quality and Truthfulness

Gilbane Building Company’s clients expect and are entitled to receive work that fully complies with the contract plans and specifications. There is no place for substandard work and no tolerance of efforts to pass off substandard work as acceptable. Similarly, Gilbane Building Company’s clients expect and are entitled to receive specific materials and equipment as required in the contract plans and specifications. Gilbane Building Company will not tolerate improper product substitutions or inadequate quality assurance. In addition, preparation of or use of false or fraudulent documents may be considered a crime, depending on the circumstances, and Gilbane Building Company will not tolerate such conduct by any of its Suppliers.

1.3 Drugs and Alcohol

Gilbane Building Company is committed to maintaining a drug-free work place . All Suppliers must comply with Gilbane Building Company policies and laws regarding the abuse of alcohol and the unauthorized possession, sale, and use of controlled substances. Possessing, using, selling, or offering illegal drugs is strictly prohibited under all circumstances. Likewise, Suppliers’ employees are prohibited from reporting for work at any Gilbane Building Company site while under the influence of alcohol or any controlled substance.

It is essential that Suppliers’ employees understand that some states may have laws that differ substantially from federal law regarding the use, possession, and sale of certain controlled substances. Gilbane Building Company meets or exceeds federal standards for controlled substances. Therefore, in jurisdictions where local law is more stringent than federal law, Gilbane Building Company will follow local law. In jurisdictions where federal law is more stringent than local law, Gilbane Building Company will comply with federal law.

1.4 Open and Fair Competition



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In bidding and negotiating Government contracts, all employees must comply with Gilbane Building Company's Supplier Code of Conduct and with the spirit and intent of any applicable laws or regulations. Under the Federal Procurement Integrity Act (FPIA), no one is allowed to solicit or to receive certain proprietary information or knowingly disclose such information to any person other than one authorized by the agency head or the contracting officer to review such information.

There is a fundamental rule that must be observed without exception: Suppliers shall not seek, solicit, take, or otherwise come into possession of oral or written information that would jeopardize the integrity of the procurement process. However, this policy is not meant to discourage site visits or requests for clarifications directed to a Gilbane Building Company client prior to a bid opening or submission of a proposal.

1.5 Discrimination and Harassment

Gilbane Building Company is committed to providing equal opportunity to all qualified workers. Gilbane Building Company does not tolerate unlawful harassment, including sexual harassment or harassment on the basis of age, citizenship status, ancestry, color, religious creed, creed, denial of family and medical care leave, disability including HIV and AIDS, marital status, including registered domestic partners, medical condition, pregnancy, childbirth, and other pregnancy-related conditions, genetic information, military and veteran status, including protected veteran status, national origin, race, sex, gender, gender identity, gender expression, transgender status, sexual orientation and/or any other categories or status that are protected by applicable federal, state or local law. In addition, Gilbane Building Company will not tolerate any type of bullying and/or inappropriate conduct. Further, Gilbane Building Company will not tolerate any form of vandalism, physical destruction of property, defacement in the form of any graffiti on temporary facilities or in the general workplace. Suppliers are expected to comply with Gilbane Building Company's Zero-Tolerance Harassment Policy, which is included in this Exhibit A to your contract with Gilbane Building Company.

1.6 Combatting Trafficking in Persons and Fair Treatment of Labor

Gilbane Building Company respects and protects the rights of those who work on our projects. We provide reasonable working conditions and fair wages. The U.S. Government has a zero-tolerance policy for its contractors and their employees, which prohibits any trafficking in persons including the trafficking-related activities described in FAR 52.222-50 (collectively known as "human trafficking"). Consistent with the U.S. Government's zero-tolerance policy, Suppliers shall comply with all federal, state and local laws concerning employment and fair treatment of labor and shall not engage in any forms of prohibited human trafficking during the performance of its work, including, but not limited to (a) engaging in severe forms of trafficking in persons, (b) procuring commercial sex acts, (c) using forced labor, (d) destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passports or driver's licenses, (e) using misleading or fraudulent recruiting practices, (f) charging employees recruitment fees, (g) failing to provide or pay for return transportation for employees at the end of employment (except where legally exempted), (h) providing or arranging housing that fails to meet the host country housing and safety standards, and (i) when required by law to do so, failing to provide an employment contract, recruitment agreement, or other required work document detailing the specific terms of employment in writing, in a language understandable to the employee.

In addition to the Gilbane Building Company Ethics Hotline (details below), persons reporting actual or suspected human trafficking or forced labor violations may utilize the **Global Human Trafficking Hotline at 1-844-888-FREE or help@befree.org**.

Efforts to Influence Others

2.1 Anti-Corruption Laws

Gilbane Building Company has a policy of never offering or accepting kickbacks, gratuities or bribes, whether directly or indirectly, in connection with a business transaction. Efforts to gain an improper advantage by giving or soliciting gratuities, bribes, kickbacks, meals, gifts or other things of value are improper, and Gilbane Building Company will not condone any conduct that violates this principle.

No Supplier shall offer or give a gift(s) or entertainment of any value to Gilbane Building Company clients, prospective clients or other individuals who are employees or officials of federal, state, county or municipal governmental bodies or other public agencies, public institutions or authorities, or any representatives of such public entities in connection with Gilbane Building Company work.

The Anti-Kickback Act of 1986 prohibits Suppliers and their employees from accepting, soliciting or offering "kickbacks," which generally include offering, soliciting, providing, or accepting money or anything of value to secure U.S. Government work or to receive favorable treatment in connection with prime contracts or subcontracts. It also prohibits the inclusion of kickbacks into the contract price of any U.S. Government prime or subcontract. Violations of the Anti-Kickback Act may result in criminal sanctions, fines and imprisonment, and significant civil penalties against violators.

In addition, no Supplier is authorized to offer or give money, or any other item of value to a foreign official on behalf of Gilbane Building Company. The Foreign Corrupt Practices Act of 1977 (the FCPA) prohibits offering or giving money, or any other item of value, to win or retain business or to influence any act or decision of any governmental official, political party, candidate for political office or official of a public international organization. Stated concisely, the FCPA prohibits the payment of bribes, kickbacks, or other inducements to foreign officials. This prohibition extends to payments to a sales representative or agent if there is reason to believe that the payment will be used indirectly for a prohibited payment to foreign officials. Violation of the FCPA is a crime that can result in severe fines and criminal penalties. In addition to the FCPA, the United Kingdom's Bribery Act may also be applicable to Gilbane Building Company's work overseas. Other anti-corruption and procurement integrity laws may also apply, depending on the jurisdiction.

2.2 Gifts and Entertainment

No Supplier shall give any Gilbane Building Company employee any gratuities, compensation, gifts or entertainment of more than incidental value, or any advances, loans, lavish



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entertainment or substantial favors. Gifts or entertainment of more than incidental value should be considered those for which the employee would not normally be in a position to reciprocate equally under normal expense account procedures. For purposes of this provision, incidental gift or entertainment is considered to be \$100 or less in value per individual occurrence. In addition, Supplier and its employees shall not perform any services at the personal homes or other properties of Gilbane Building Company employees unless such work is performed at prevailing market rates and without providing any discounts or performing any “free” work.

2.3 Political Activity

The following political activities are prohibited at Gilbane Building Company sites:

- Demonstrating;
- Circulating petitions;
- Soliciting votes or contributions;
- Conducting or participating in opinion polls;
- Fundraising;
- Posting signs in and around Gilbane Building Company offices, trailers or other Gilbane Building Company property that endorse a political candidate, political point of view or ballot initiative;
- Wearing clothing, pins, hats or similar materials that endorse a political candidate, political point of view or ballot initiative; and,
- All other political activities that are not considered part of the Supplier’s normal duties¹.

Reporting of Ethics Problems

Every Supplier is responsible for reporting illegal, unethical or questionable behavior or other violations of this Supplier Code of Conduct to the Gilbane Building Company Ethics Hotline.

3.1 Gilbane Building Company Ethics Hotline

Gilbane Building Company has established an Ethics Hotline to provide a means to report concerns or to raise questions about possible ethics violations or fraud. The Gilbane Building Company Ethics Hotline service is provided by a third party, Lighthouse Services, Inc. Depending on the Supplier’s location, there are multiple avenues available to report concerns, all of which are available 24 hours a day:

Toll-Free Hotline:

- 1.English speaking USA and Canada: 1-844-240-0004
- 2.Spanish speaking USA and Canada: 1-800-216-1288
- 3.French speaking Canada: 1-855-725-0002
- 4.Spanish speaking Mexico: 01-800-681-5340
- 5.Chinese speaking China: 400-720-9500
- 6.All other countries: 800-603-2869 (must dial country access code first)

Website: www.lighthouse-services.com/gilbaneco

Email: reports@lighthouse-services.com(must include Company name with report)

Fax: (215) 689-3885 (must include Company name with report)

ANONYMOUS REPORTS

Callers to the dial-in Gilbane Building Company Ethics Hotline can report their concerns or complaints anonymously if they choose to do so. Callers will be assigned a case number by which they can track the status of their reports without revealing their identities. While Gilbane Building Company encourages utilization of the anonymous reporting method, please note that, because the source of the report will remain unknown, direct follow-up with the person making the report will not be possible except through the independent third-party administered dial-in Ethics Hotline.

3.2 Protection for Whistleblowers

Gilbane Building Company prohibits retaliation against any person who, in good faith, seeks help regarding a violation of this Supplier Code of Conduct or reports known or suspected violations. Any Supplier’s actual or attempted reprisal or retaliation against a reporting employee who sought help or filed a report in good faith will constitute a material breach of the Agreement by the Supplier, which could result in consequences up to and including termination of Supplier’s contract with Gilbane Building Company. Supplier agrees that, in addition to its indemnification obligations contained in the Agreement, it will defend, indemnify and hold Gilbane Building Company harmless from any fines, costs, damages, penalties, attorneys’ fees, and causes of action arising out of or resulting from such actual reprisal or retaliation or other employment action by Supplier or anyone for whom Supplier is responsible.

3.3 Suppliers’ Duty to Cooperate



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Supplier shall cooperate with Gilbane Building Company in all respects during the course of Gilbane Building Company’s investigation of reports concerning actual or suspected violations of this Supplier Code of Conduct. Among other things, Supplier is expected promptly to investigate any of its employee(s) and/or its sub-tier contractors or consultants at any level upon notice by Gilbane Building Company that such employee(s) or sub-tier contractors or consultants are alleged to be the subject of an Ethics Hotline report or complaint. Supplier shall timely notify Gilbane Building Company of its investigation findings upon completion. Upon request, Supplier shall provide Gilbane Building Company with records that Gilbane Building Company deems in its sole judgment to be pertinent to the investigation, any investigation reports completed by the Supplier into the matter, and access to Supplier’s employees available for interview by Gilbane Building Company’s representatives. Supplier’s failure or refusal to comply with this provision shall constitute a material breach of the Agreement.

Conclusion

First and foremost, when in doubt of any of the above, ask. As noted above, the specific rules related to the expected standards of conduct can be complicated. If you are not sure of the correct course of conduct, ask the authorized Gilbane Building Company representative for your Agreement or contact the Gilbane Building Company Ethics Hotline.



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EXHIBIT A-4:

WORKFORCE DIVERSITY COMMITMENT

Gilbane Building Company has a long-standing commitment to building winning partnerships with the small and diverse business community. We believe in the culture of inclusion wherein the input by all leads to better outcomes. Specifically, Gilbane Building Company recognizes the importance of small, minority, women, disabled veteran, and other recognized disadvantaged business enterprises to the economics of the construction industry, the communities they serve and to our success. Gilbane Building Company is strongly committed to promoting and increasing the participation of small, minority, women, and disabled veteran business enterprises within its purchasing and contracting practices. Gilbane Building Company is proud to formalize its long-standing commitment to the development and growth of a diverse supplier base through the inclusion of trade contractors, suppliers and professional services firms from a wide variety of backgrounds. Gilbane Building Company believes being proactive in the procurement process provides the most opportunity for everyone to participate.



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In witness whereof they have hereunder set their hands the day and date first above written.

Signatures

S. A. Comunale Co., Inc
Trade Contractor

[Signature area for S. A. Comunale Co., Inc]

Gilbane Building Company
Construction Manager

[Signature area for Gilbane Building Company]