



State of Ohio Subcontract Form
State of Ohio Standard Requirements
for Public Facility Construction

This Agreement is made as of the date set forth below between the Contractor and the Subcontractor in connection with the Project.

Project Number:	OSU-09MS81
Project Name:	Chemical and Biomolecular Engineering and Chemistry Building (CBEC)
Site Address:	151 West Woodruff Avenue Columbus, OH 43210
Contractor:	Gilbane Building Company
Contractor's Principal Contact:	Craig Wagner
Address:	440 Polaris Parkway, Suite 200 Westerville, OH 43082
Subcontractor:	Baker Concrete Construction, Inc.
Subcontractor's Principal Contact:	Doug McNamee
Address:	900 North Garret Road, Monroe, OH 45050
Public Authority:	The Ohio State University
Project Manager:	Faye Bodyke
Address:	400 Central Classroom Building 2009 Milliken Road Columbus, OH 43210

ARTICLE 1 - NATURE OF SUBCONTRACT

1.1 The Subcontractor shall perform the entire Subcontract Work as specified in Exhibits A, B, C, D, E, F, G, H, I and J and as described in the Contract Documents for the Project.

ARTICLE 2 - COMPENSATION

2.1 The Contractor agrees to pay for the performance of this Subcontract, subject to additions and deductions as provided in the Contract Documents, the Subcontract Sum of \$6,998,065, comprised of the following:

BP 03A - Cast In Place Concrete \$ 6,998,065.00

ARTICLE 3 - TIME OF PERFORMANCE

3.1 Time is of the essence. The Subcontractor shall diligently prosecute and complete all Subcontract Work in accordance with the construction program schedule agreed between the parties.

ARTICLE 4 - CONTRACT DOCUMENTS

4.1 To the extent that the contract between the Public Authority and the Contractor applies to the Subcontract Work:

4.1.1 The Contractor and the Subcontractor agree to be mutually bound by the terms of the Contract Documents;



- 4.1.2 The Contractor assumes toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Public Authority has and assumes toward the Contractor;
- 4.1.3 The Subcontractor assumes toward the Contractor the rights, remedies, obligations, and responsibilities that the Contractor assumes toward the Public Authority; and
- 4.1.4 The Subcontractor agrees to perform its portion of the Work in accordance with the Contract Documents, enforced by and under the laws of the State of Ohio.
- 4.2 The Subcontract and any modifications, amendments, or alterations thereto shall be governed, construed, and enforced by and under the laws of the State of Ohio.
- 4.3 If any term or provision of the Subcontract, or the application thereof to any Person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Subcontract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby; and each term and provision of the Subcontract shall be valid and enforced to the fullest extent permitted by law.
- 4.4 The Subcontract shall be binding on the Contractor and Subcontractor, their successors and assigns, in respect to all respective covenants and obligations contained in the Contract Documents, but the Subcontractor may not assign the Subcontract without the prior written consent of the Contractor and the Public Authority.

ARTICLE 5 - EFFECTIVENESS

- 5.1 The Subcontract shall become binding and effective upon execution by the Contractor.
- 5.2 This Subcontract has been executed in several counterparts, each of which shall constitute a complete original Subcontract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.
- 5.3 Any signatory may deliver a copy of its counterpart signature page to this Subcontract via fax or e-mail. Each signatory shall be entitled to rely upon a signature of any other signatory delivered in such a manner as if such signature were an original.

ARTICLE 6 - REPRESENTATIONS

- 6.1 Contingent Assignment. The Contractor's contingent assignment of this Subcontract to the Public Authority, as provided in the Contract, is effective after termination of the Contractor by the Public Authority and the Public Authority's acceptance of the assignment in writing to the Subcontractor. The Subcontractor consents to the assignment and shall be bound at the same price and terms as in the Subcontract to the Public Authority. Unless the Public Authority takes assignment of the Subcontract, the Subcontractor will not have any contractual rights against the Public Authority.
- 6.2 Intended Third-Party Beneficiary. The Public Authority is an intended third party beneficiary of the Subcontract, entitled to enforce any rights thereunder for its benefit.
- 6.3 Insurance. The Subcontractor shall maintain insurance in accordance with the Contract Documents, Exhibit A, C and D sets forth the minimum limits of liability for the insurance required in the Contract Documents.
- 6.4 Right to Audit. The Subcontractor agrees that the Public Authority or any agents designated by the Public Authority have access to and the right to audit and the right to copy at the Public Authority's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work for a period of not less than 3 years following completion of the Work consistent with Section 149.43 of the Revised Code with regard to the Public Authority's obligation to maintain confidentiality of trade secrets.

- 6.5 **Indemnity.** To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Public Authority, the Contractor, their consultants and employees from all claims and expenses for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs and expenses, but only to the extent caused by the negligent acts or omissions of the Subcontractor or a person or entity for whom the Subcontractor may be liable. This Subcontract does not require a Subcontractor to waive its immunity under the Workers Compensation laws of Ohio from claims brought against the Subcontractor by the Subcontractor's employees.
- 6.6 **Prompt Pay.** The Contractor shall at a minimum make payments to the Subcontractor in accordance with Applicable Law, including Section 4113.61 of the Revised Code. Progress payments to the Subcontractor for satisfactory performance of Subcontract Work shall be made no later than 10 days after receipt by the Contractor of payment from the Public Authority for Subcontract Work.
- 6.7 **Retainage.** Subcontractor retainage shall be at a rate equal to the percentage retained from the Contractor's payment by the Public Authority for the Subcontract Work, unless a lesser percentage is otherwise specified.
- 6.8 **Warranty.** The Subcontractor fully warrants, for the benefit of the Public Authority, that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defective workmanship or materials.
- 6.9 **Non Waiver of Lien Rights or Payment Bond Rights.** This Subcontract shall not prohibit a Subcontractor from exercising its rights under Chapter 1311 of the Revised Code or under any Contractor-provided payment bond.
- 6.10 **Non-Discrimination.** The Subcontractor agrees to fully comply with Applicable Law regarding equal opportunity, including Section 153.59 of the Revised Code and, to the extent applicable, all Executive Orders issued by the Governor of the state of Ohio.
- 6.11 **Dispute Resolution.** The supplemental conditions to this Subcontract shall provide for a dispute resolution process comparable to the Contractor's dispute resolution process in terms of timing, notice, substantiation, and informal dispute resolution efforts. The dispute resolution process provided in the supplemental conditions shall result in prompt access to the ultimate dispute resolution mechanism selected by the parties.
- 6.12 In the event that any supplemental conditions or other Subcontract terms conflict with the State of Ohio Subcontract Form, the State of Ohio Subcontract Form takes precedence and this Subcontract shall be read and enforced to include the provisions of the State of Ohio Subcontract Form.
- 6.13 The following exhibits are attached to and are a part of this Subcontract:
 - 6.13.1 Exhibit A: Gilbane Trade Contract Agreement
 - 6.13.2 Exhibit B: OSU Supplemental Conditions
 - 6.13.3 Exhibit C: General Conditions (CM At Risk Contract)
 - 6.13.4 Exhibit D: Gilbane Special Conditions
 - 6.13.5 Exhibit E: Gilbane Project Safety Plan
 - 6.13.6 Exhibit F: Gilbane Project Quality Plan
 - 6.13.7 Exhibit G: Quality Forms
 - 6.13.8 Exhibit H: Gilbane Collaborative Work Plan System
 - 6.13.9 Exhibit I: BIM Standards and Specifications
 - 6.13.10 Exhibit J: Gilbane Monthly Billing Instructions with Textura Information

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Subcontract Form.

Baljet Concrete Construction, Inc.

Signature

[Handwritten Signature]

Printed Name

General Counsel, Inc.

Gilbane Building Company

Signature

[Handwritten Signature]

Printed Name

Chief Purchasing Agent

Title

Date

9/6/2012

END OF DOCUMENT

**Gilbane Building Company
Contract Agreement**

Agreement # 78778-000
Made as of August 8, 2012
Vendor # 25457
Description: BP 03A Concrete

Between

The Construction Manager:	Address	City	State	Zip Code
Gilbane Building Company	440 Polaris Parkway Suite 200	Westerville	OH	43082-7986

And the Trade Contractor:	Address	City	State	Zip Code
Baker Concrete Construction, Inc.	900 North Garver Road	Monroe	OH	45050-1277

The Project Name:	Address	City	State	Zip Code
Ohio State University CBEC	2003 Milliken Road	Columbus	OH	43210

The Owner Name:	Address	City	State	Zip Code
The Ohio State University	2003 Milliken Road	Columbus	OH	43210

The Architect Name:	Address	City	State	Zip Code
Stantec				

ARTICLE I

THE WORK

1.1 The Trade Contractor and the Construction Manager agree that the materials and equipment to be furnished and the work to be done by the Trade Contractor are as follows:

1.1.1 Furnish all labor, materials, equipment and services required to complete all Cast-In-Place Concrete for The Ohio State University – Chemical and Biomolecular Engineering and Chemistry Project per the provisions of Bid Package No. 03A executed 6/19/12 and revised on 6/22/12, the Scope Review Meeting on 6/20/12 and e-mails from Jeremy Long dated 6/26/12, Jay Segura dated 6/22/12, 6/26/12, 7/27/12. All work shall be in strict accordance with the Bid Package documents and include the following:

- 1.1.1.1 General Instruction to Bidders dated 4-30-12
- 1.1.1.2 Gilbane Safety Plan dated 4-30-12
- 1.1.1.3 Gilbane Quality Plan and Forms dated 4-30-12
- 1.1.1.4 Site Logistics Plan dated 6-11-12
- 1.1.1.5 Supplementary Conditions OSU
- 1.1.1.6 General Conditions CM at Risk
- 1.1.1.7 Gilbane Special Conditions
- 1.1.1.8 Gilbane Schedule CBEC 001 5-25-12
- 1.1.1.9 Gilbane BIM Standards and Specifications 5-10-12
- 1.1.1.10 Billing Instructions
- 1.1.1.11 Business Credentialing Service Insurance Tracking Procedures
- 1.1.1.12 OSU Prevailing Wage Requirements
- 1.1.1.13 Gilbane Proposal Form for Bid Package #03A submitted on 6-19-12 and revised 6-22-12.
- 1.1.1.14 Baker proposed schedule dated 6-26-12
- 1.1.1.15 Supplement #1 dated 6-1-12
- 1.1.1.16 Supplement #2 dated 6-11-12
- 1.1.1.17 Supplement #3 dated 6-15-12
- 1.1.1.18 Supplement #4 dated 6-18-12
- 1.1.1.19 Scope Review Meeting held on 6-20-12
- 1.1.1.20 Pre Bid Meeting Minutes 5-31-12
- 1.1.1.21 Drawing and Specification Log dated 6-6-12
- 1.1.1.22 Gilbane Collaborative Work Planning System
- 1.1.1.23 Excludes Performance and Payment Bonds. Trade Contractor is to enroll in Construction Manager's default insurance program (CID) per Article 6.2

1.1.1.24 The following alternate pricing items have been accepted, rejected, or are on hold as indicated:

- 1.1.1.24.1 Alternate #1 – Extend completion of concrete structure by 30 days has been REJECTED and is not included in this contract; proposed ADD was \$187,900.00.
- 1.1.1.24.2 Alternate #2 - Accelerate completion of concrete structure by 30 days to 1/19/13 has been REJECTED and is not included in this contract; "No Bid" was received.
- 1.1.1.24.3 Alternate #3 – Provide engineered temporary bracing of the foundation walls adjacent to the main lobby area to allow backfill to take place prior to the first floor deck being poured. This includes the wall along column line 10, G.3 between 5.1 and 10 and the wall along 5.1 between G.3 and K.1, has been accepted and is

INCLUDED in this contract; ADD \$37,000.00.
 1.1.1.24.4

Alternate #4 – Provide the horizontal plaza and loading dock waterproofing systems. The system includes cleaning and prepping the existing concrete, cold fluid applied waterproofing, protection board and drainage composite. Installation shall take place in the spring of 2014. Tapered insulation will be provided by others. The Alternate has not been accepted but is to remain PENDING and available for Owner acceptance until 7/1/13; potential add \$11,500.00.

1.1.1.24.5
 Alternate #5 – Deduct alternate to use natural gas for temporary heating. Utility cost to be paid by the Construction Manager. The Concrete Contractor will be responsible for all other winter protection cost associated with their work including but not limited to gas piping, heaters, blankets, tarps, tents, hot water, additives, etc. The tap for the gas will be made available in the meter pit. The Alternate has not been accepted but is to remain PENDING and available for Owner acceptance until 11/1/12; potential deduct of \$30,000.00.

1.1.1.24.6
 Alternate #6 –Provide all cost associated with revising Scope of Work section 4.24 to read: “The mass excavation Subcontractor will excavate 4 feet outside of the face of wall and down to 732.83’ (top of typ. footing) +/- 0.10 ft and excavate out all elevator pits and sump pits. The mass excavation Subcontractor will also undercut the building pad to 730.5’ and backfill with #304 up to 732.0’. The undercut will occur 5’ inside the face of wall as to not undercut the footings. This Subcontractor shall accept the building pad from the mass excavation Subcontractor prior to commencing any foundation work. Provide dewatering and all required maintenance and/or restoration of building pad until slabs are placed. Subcontractor will not be entitled to additional costs for repairing subgrade damaged by inadequate dewatering. Provide all required excavation and grading prior to placement of stone base to achieve the proper elevations. This Alternate has been accepted and is INCLUDED in this contract; ADD \$10,000.00.

1.1.1.24.7
 Voluntary #1 –Delete requirement for dedicated full-time safety personnel (scope of work item 3.6) has been accepted and is INCLUDED in this contract; DEDUCT \$45,000.00.

1.1.1.24.8
 Voluntary #2 – Delete requirement for composite clean-up (scope of work item 3.6), has been accepted and is INCLUDED in this contract; DEDUCT \$32,000.00.

1.1.1.24.9
 Voluntary #3 – Provide fixed loading platforms in lieu of retractable platforms for use by all trades has been accepted and is INCLUDED in this contract; DEDUCT \$18,000.00.

1.1.1.24.10
 Voluntary #4 – Provide Polyguard Waterproofing in lieu of the specified Neptune Wetsuit. The Alternate has not been accepted but is to remain PENDING and available for Owner acceptance until 10/1/12; potential deduct of \$15,000.00.

1.1.1.24.11
 Voluntary #5 – Provide Dri-Lok Waterproofing in lieu of the specified Neptune Wetsuit. The Alternate has not been accepted but is to remain PENDING and available for Owner acceptance until 10/1/12; potential deduct of \$130,000.00.

1.1.1.25
 Included are the following allowances to be used only at the direction of the CM. Any unused allowance funds will be credited back to the Owner:

Per sheet S001, provide 6 tons of reinforcing bars to be used as directed by the architect/engineer. Cold bend in field if required.	\$9,600.00
Per sheet S001, provide 15 cubic yards of 3000 psi concrete including formwork.	\$3,100.00
Per sheet S001, provide 15 cubic yards of 4000 psi non-air entrained concrete including formwork.	\$6,308.00
Per sheet S001, provide 20 cubic yards of 5000 psi non-air entrained concrete including formwork.	\$9,850.00
Per sheet S001, provide 8 cubic yards of 6000 psi non-air entrained concrete including formwork.	\$5,035.00

1.1.1.26 Included are the following unit prices

1) Unsuitable soil removal and haul offsite	\$19.00 /CY
2) Additional rock excavation	\$55.00 /CY
3) Housekeeping pads: 4" thick, 4,000 psi concrete, chaired mesh, drilled dowels, formed, placed, and finished.	\$15.30 /SF
4) Waterproofing system including membrane, material, adhesive, board, installation \$/SPF	\$10.00 /SF
5) 4000 PSI concrete delivered to the job site	\$ 90.00 /CY
6) Rebar installed	\$1,600.00/TN
7) Additional curtain wall anchor pocket including grout	\$ 25.00 /EA
8) Additional Tower Crane Rental with Operator	\$28,000.00/MN
9) Additional Tower Crane Rental with Operator	\$7,000.00/WK
10) Additional Tower Crane Rental with Operator	\$1,400.00/DY
11) Additional Tower Crane Rental with Operator	\$ 175.00 /HR
12) Credit for #304 granular material provided by others for use by BP 03A slab sub-base.	\$ 14.26 /TN
13) Excavate 2' wide x 2' deep trench (assume in rock) in basement for future underground plumbing. Backfill with #304 stone. Layout will be performed by the Plumbing Contractor.	\$ 24.50 /LF
14) Excavate 2' wide x 3' deep trench (assume in rock) in basement for future underground plumbing. Backfill with #304 stone. Layout will be performed by the Plumbing Contractor.	\$ 36.50
15) Excavate 2' wide x 4' deep trench (assume in rock) in basement for future underground plumbing. Backfill with #304 stone. Layout will be performed by the Plumbing Contractor.	\$ 48.50

1.1.1.27 Include the following labor rates:

Laborer	\$46.48 /HR
Laborer Foreman	\$47.23 /HR
Carpenter Journeyman	\$52.78 /HR
Carpenter Foreman	\$54.28 /HR
Operator	\$62.84 /HR
Cement Finisher	\$53.61 /HR

1.2 The Trade Contractor shall be held accountable for the following Project related responsibilities: furnish all labor and supervisor; furnish, supply and install all equipment, material, supplies, tools, scaffolding, hoisting, transportation, unloading and handling; do all things required to complete the work described above on the Project all in accordance with the drawings and specifications prepared by the

Architect/Engineer; and furnish all necessary information, shop drawings, details, samples, brochures, etc. for Owner/Architect approval, as may be required.

ARTICLE 2

TIME OF COMMENCEMENT AND COMPLETION

2.1 The Trade Contractor shall start the work upon notice to proceed and shall execute the work with diligence and dispatch so as to maintain such schedules and milestones as established by the Construction Manager. The Trade Contractor agrees to complete portions and the whole of the work by the following anticipated dates:

2.1.1 The following is a definition of Task Milestones, which are directly related to the Work to be performed by the Trade Contractor, and are essential elements for the execution of the Project in accordance with the Project Schedule:

Task	Start Date	Completion Date
1. Anticipated Date of Contract Award		6/29/12
2. Submittals schedule due to Gilbane		7/27/12
3. Commence Jobsite work of the proposal	8/13/12	
4. Start Foundations	8/20/12	
5. Complete foundations and walls		10/29/12
6. Start foundation waterproofing	10/18/12	
7. Complete all foundation waterproofing		12/15/12
8. Complete lab building concrete		2/19/13
9. Complete office tower structure for installation of structural steel.		11/21/12
10. Complete jobsite work associated with this proposal.		7/31/14

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 progress schedule or the schedule as established above, the Construction Manager reserves the right, after 48 hours formal notice, either by letter, telegram or confirmed 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 from other sources and charge the cost thereof to the Trade Contractor.

2.4 Time is of the essence in this Agreement.

ARTICLE 3

THE CONTRACT SUM

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

Six Million Nine Hundred Ninety-Eight Thousand Sixty-Five Dollars and No Cents.

Contract amount: \$6,998,065.00

Contract amount includes this EDGE participation:

EDGE (6%) Six Percent \$419,884.00

Itemize contract amount

Description	Amount
	Original Base Bid
1) Revise Allowance #5 - 1,000 SF of housekeeping pads.	\$7,275,000.00
2) Adjust temporary stair tower scope.	(\$2,200.00)
3) Delete allowances 1-8 and 14-15 as listed in section 10 of the Proposal Form.	\$14,000.00
	(\$240,735.00)
	Revised Base Bid Amount
Alternate #3 - Temporary Bracing	\$7,046,045.00
Alternate #6 - Install Shoring 4' off of Foundation Wall	\$37,000.00
Voluntary #1 - Delete Safety Officer	\$10,000.00
Voluntary #2 - Delete Clean Up Crew	(\$45,000.00)
Voluntary #3 - Delete Fixed Loading Platform	(\$32,000.00)
	(\$18,000.00)
	Contract Amount
	\$6,998,065.00

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, quadruplicate 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 condition precedent, upon the Construction Manager receiving contract payments, including retainer from the Owner. 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 include a line item allotting funds for clean-up.

3.3 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 and materials and on account for all work covered in the previous months request for payment. Affidavit and waiver of liens may be required to be submitted from Trade Contractors, suppliers, and/or Trade-Subcontractors (all tier). The Trade Contractor shall be required to execute a general release prior to receiving final payment.

3.4 Ten percent (10%) of each payment shall be retained, unless specific provisions to the contrary are indicated in the contract documents.

3.5 No payment made under this Agreement, including the final payment, shall be conclusive evidence of the performance of the work, either wholly or in part, and no payment shall be construed as an acceptance of defective work or improper materials.

3.6 The Trade Contractor shall save and keep the Construction Manager, the Owner and the Owner's property free from all mechanics' and materialmen's liens and all other liens and claims, legal or equitable, arising out of the Trade Contractor's work hereunder. In the event any such lien or claim is filed by anyone claiming by, through, or under the Trade Contractor, the Trade Contractor shall remove and discharge same, by bonding or otherwise, within five (5) days of the filing thereof.

ARTICLE 4

THE CONTRACT DOCUMENTS

4.1 The contract documents consist of this Agreement and any exhibits attached hereto; the Agreement between the Owner and the Construction Manager; the conditions of the Agreement between the Owner and the Construction Manager, General Conditions, Supplementary, Special and Other Conditions, the Drawings, Specifications, General Instructions to Bidders, Supplements to Bidder's documents, form of Proposal, all Addenda issued prior to and all modifications issued after execution of the Agreement between the Owner and Construction Manager and agreed upon by the parties.

4.2 The Trade Contractor agrees to perform the work under the general direction of the Construction Manager and subject to the final approval of the Architect/Engineer or other specified representative of the Owner, in accordance with the contract documents.

4.3 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 diligently and properly.

4.5 No extra work shall be performed under this Agreement, except upon receipt of a written order from the Construction Manager.

ARTICLE 5

INDEMNITY

5.1 FOR TEN (\$10.00) DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE TRADE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS, THE CONSTRUCTION MANAGER, THE OWNER, THE ARCHITECT/ENGINEER, AND ALL OF THEIR AGENTS AND EMPLOYEES FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR FAILURE IN PERFORMANCE OF THE TRADE CONTRACTORS WORK UNDER THIS AGREEMENT PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING THE LOSS OF USE RESULTING THEREFROM, (2) 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. 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 WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

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.

5.3 For ten (\$10.00) dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, and to the fullest extent permitted by law, the Trade Contractor agrees to defend, indemnify and hold harmless, the Construction Manager, the Owner, the Architect/Engineer, and all of their agents and employees from and any and all against claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from any of the following:

- 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;
- the inaccuracy of any warranty or representation by the Trade Contractor given in accordance with or contained in the contract documents;
- any breach of this agreement by the Trade Contractor and/or its Trade-Subcontractors of any tier;
- any claims by employees of the Trade Contractor and/or its Trade-Subcontractors of any tier, including, without limitation, those alleging employment discrimination or sexual harassment;
- 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
- 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.

The provisions of this subparagraph 5.3 and the obligations of the Trade Contractor hereunder shall survive Final Completion and Termination of this Agreement.

ARTICLE 6

PERFORMANCE BOND AND LABOR AND MATERIAL BOND: INSURANCE

6.1 The Trade Contractor agrees to furnish and pay for a 100% Performance Bond and a 100% Labor and Material Payment Bond on the bond forms issued with this Agreement. Bonds must be issued by a company acceptable to the Construction Manager and must be accompanied by a Power of Attorney. The bonds are to be delivered with this executed Agreement.

6.2 If Performance and payment Bonds are not required under this Agreement, as designated in Paragraph 6.1, the Construction Manager, may, at its sole option, enroll Trade Contractor in the Construction Manager's default insurance program. If the Trade Contractor is enrolled into the Construction Manager's default insurance program, the Trade Contractor is required to comply with the terms and conditions of the Construction Manager's Trade Contractor prequalification procedures. Failure to comply with these terms and conditions may be a basis to require the Trade Contractor to obtain Performance and Payment Bonds, under the terms and conditions provided herein, within fifteen (15) days written notice from the Construction Manager. Failure to provide Performance and Payment Bonds under this provision shall constitute a breach of this Agreement and a basis for immediate termination of the Trade Contractor for cause.

6.3 The Trade Contractor shall purchase from, and maintain with, a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Trade Contractor from claims which may arise out of or result from the Trade Contractor's ongoing and completed operations under the Agreement and for which the Trade Contractor may be legally liable, whether such operations be by the Trade Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance required by this Agreement shall be written with insurance carriers that maintain an A.M. Best rating of A-(VII) or better. The insurance required by this Article shall be written for not less than the minimum limits of liability specified in this Agreement, or required by law, whichever coverage is greater. Any insurance limits required in this Article shall be denominated in US Dollars. Unless otherwise indicated in this Agreement, coverages, whether written on an occurrence or claims-made basis, shall be maintained at a minimum, without interruption, from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after

final payment.

(a) **Workers Compensation and Employer's Liability.** Trade Contractor shall provide workers compensation insurance. This insurance shall include coverage for claims under worker's compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed, and shall cover claims for damages because of bodily injury, occupational disease or death of Trade Contractor's employees, and whether or not trade contractor utilizes leased employees or labor services for such Work. Such insurance shall also include the broad form all-states endorsement and voluntary compensation endorsement. United States Longshoreman and Harbor Workers Act coverage is required if Trade Contractor's performance under this Agreement includes working over or near navigable waters. Federal Employers Liability Act coverage is required if Trade Contractor's performance under this Agreement includes working in or around a railroad.

The employer's liability insurance required by this Article shall include the following minimum limits of liability: bodily injury by accident \$500,000 per accident, bodily injury by disease \$500,000 policy limit, and bodily injury by disease \$500,000 per employee.

If Trade Contractor's performance under this Agreement requires it to work in North Dakota, Ohio, Wyoming, Washington State and/or Puerto Rico, then Trade Contractor shall purchase workers compensation insurance directly from the jurisdiction. When Trade Contractor is performing work in one of these jurisdictions, its employer's liability obligation under this Agreement shall be met by providing a 'stop-gap' endorsement to either its commercial general liability policy or a workers compensation insurance policy covering one or more states not listed in this paragraph.

(b) **Commercial General Liability ("CGL").** Trade Contractor shall provide CGL coverage on an "occurrence" based form. This insurance shall include coverage for explosion, collapse and underground hazards (the "XCU" hazards), contractual liability including coverage for bodily injury, property damage and personal and advertising injury arising out of premises-ongoing operations and products-completed operations (without inclusion of CG 21 39 or any other endorsement which reduces the assumed tort liability of an insured contract provision of this coverage), independent contractors, products-completed operations, personal and advertising injury, and claims for damages because of injury to, or destruction of tangible property including loss of use resulting thereof. The CGL insurance required by this Article shall not contain any residential limitation or residential exclusion related to premises operations or products-completed operations coverage. Products-completed operations coverage shall remain in effect after acceptance of Construction Manager's work by Owner, under the agreement between the Construction Manager and Owner, and from the date of such acceptance until the later of the period of the statute of limitations or the statute of repose for the types of claim(s) covered by this insurance. If such endorsement is necessary to provide such extended coverage, Trade Contractor shall require its insurers to endorse its policies showing this extension of coverage for products-completed operations coverage. The limits of liability for CGL insurance shall be at a minimum:

Each Occurrence	\$1,000,000	Medical Expense	\$
5,000			
Personal and Advertising Injury Limit	\$1,000,000	General Aggregate Limit	\$1,000,000
Products-Completed Operations Aggregate Limit	\$1,000,000		

* The General Aggregate shall apply on a per project basis.

(c) **Business Automobile Liability.** Trade Contractor shall provide business automobile liability insurance to include 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 (but not including mobile equipment) including any owned, non-owned or hired vehicle. The limits of liability for business automobile liability shall be at a minimum \$1,000,000 combined single limit for each accident. If Trade Contractor will be hauling or transporting any hazardous materials, the business automobile policy required herein must include the CA 99 48 10 01 broadened pollution liability endorsement or its equivalent.

(d) Umbrella or Excess Liability. Trade Contractor shall provide umbrella or excess liability insurance and shall schedule any employer's liability, CGL and business automobile liability policies required by this Agreement onto such insurance. The umbrella or excess liability insurance shall not contain any residential limitation or residential exclusion related to premises-operations or products-completed operations coverage. Trade Contractor shall provide Construction Manager with the schedule of underlying policies for any umbrella or excess liability policy maintained in accordance with this Agreement. The limits of liability for the umbrella liability insurance shall be at a minimum \$5,000,000 each occurrence and \$5,000,000 annual aggregate.

(e) Professional Liability. If Trade Contractor's scope of work requires design and/or professional services, the Trade Contractor or Trade Contractor's designer, architect or engineer shall provide professional liability insurance (errors & omissions liability insurance) for protection from claims arising out of the performance of any design, engineering or professional services performed or furnished in connection with the Trade Contract Work caused by any negligent act, error or omission for which Trade Contractor and/or the Trade Contractor's Architect(s)/Engineer(s) may be liable. This insurance shall remain in effect after acceptance of Construction Manager's work by Owner, under the agreement between the Construction Manager and Owner, and from the date of such acceptance until the later of the period of the statute of limitations or the statute of repose for the types of claim(s) covered by this insurance. If such coverage is project specific, then an extended reporting endorsement shall be provided for such period. Professional Liability insurance shall include a retroactive date that precedes the commencement of any Work under this Agreement. The limits of liability for professional liability insurance shall be at a minimum \$1,000,000 each claim and \$1,000,000 annual aggregate.

(f) Contractor's Pollution Liability. If Trade Contractor's scope of Work requires removal, hauling or storage of hazardous or regulated materials including, but not limited to, asbestos, lead, mercury or polychlorinated biphenyls ("PCBS"), the Trade Contractor shall provide contractor's pollution liability insurance for protection from claims arising out of the performance of any work involving such materials. (In addition, pollution coverage shall be required in accordance with the business automobile liability coverage in this Article.) Coverage shall apply on an "occurrence form" basis, shall cover at a minimum bodily injury and property damage liability, defense costs, and clean-up costs. This insurance shall remain in effect after acceptance of the Construction Manager's work by Owner, under the agreement between the Construction Manager and Owner, and from the date of such acceptance until the later of the period of the statute of limitations or the statute of repose for the types of claim(s) covered by this insurance. If such coverage is project specific, then an extended reporting endorsement shall be provided for such period. If only "claims-made form" coverage is commercially available, then contractor's pollution liability insurance shall include a retroactive date that precedes the commencement of any Work under this Agreement. The limits of liability for this insurance shall be at a minimum \$5,000,000 each occurrence and \$5,000,000 annual aggregate.

(g) Contractor's Equipment and Property. Trade Contractor shall maintain property insurance coverage at its expense covering its tools, equipment and other business or personal property, whether owned or rented, the capital value of which is not incorporated into the cost of the Work. To the extent that Trade Contractor carries any property insurance, including any installation floater applicable to the Work to which this Agreement applies, such insurance will be primary insurance without any

contribution from any other property insurance, including builder's risk insurance, applicable to their Work. Trade Contractor waives any right of action for damages against Construction Manager, Owner, both of their agents, officers, directors, and employees, and anyone else required by Owner for loss or damage, including loss of use, to any such property insured in accordance with this paragraph (g).

(h) Additional Insured. Construction Manager, Owner, both of their agents, officers, directors and employees, and any others required by Owner in its Contract Documents with Construction Manager (collectively "Additional Insureds") shall be named as additional insureds on the CGL, business automobile liability, umbrella liability, excess liability and contractor's pollution liability insurance required of Trade Contractor by this Agreement on a primary basis, without contribution from any other insurance or self-insurance programs afforded to the Additional Insureds. Furthermore, the CGL, umbrella and excess liability additional insured coverage provided to the Additional Insureds shall cover actual or alleged bodily injury, property damage and personal and advertising liability arising out of any premises-ongoing operations and products-completed operations. The additional insured coverage applicable to the CGL policy shall be provided on form (a) **CG 20 10 1185** or forms (b) **CG 20 10 10 01 AND CG 20 37 10 01**, or their equivalent(s), unless otherwise approved by Construction Manager. Where Trade Contractor's CGL insurance does not afford blanket additional insured coverage when such coverage is required by contract, but rather requires scheduling any additional insured coverage when endorsement, then the Additional Insureds shall be scheduled by endorsement. If specific endorsement is required on subsequent policy forms in order to continuously maintain additional insured status, then Trade Contractor shall cause any future policies to be similarly endorsed. The CGL, umbrella and excess liability additional insured coverage required in this paragraph shall remain in effect after Owner's acceptance of Construction Manager's work, as described in the agreement between the Construction Manager and Owner, and from the date of such acceptance until the later of the period of the statute of limitations or the statute of repose for the types of claims covered by the insurance to which the additional insured status applies. The limits of liability required of Trade Contractor in this Agreement are not intended to be the sole limits applicable to the Additional Insureds. If Trade Contractor's policy limits are greater than the minimum limits of liability required in this Agreement, those policy limits, and any excess policy limits, shall also be applicable to the Additional Insureds' coverage. Copies of any additional insured endorsements required by this Article shall be attached to the applicable certificate of insurance.

(i) Self-Insured Retentions (SIR's); Deductibles. Any costs not covered due to self-insured retentions ("SIR's") or deductibles for any insurance required to be provided and maintained by Trade Contractor under this Agreement, are the sole responsibility of the Trade Contractor. Any SIR or deductible in excess of \$50,000 must be approved by Construction Manager. Trade Contractor shall be considered a self-insurer with respect to its additional insurance obligations under paragraph (h) for any self-insured retention or deductible applied by its insurer to Construction Manager.

(j) Notice of Cancellation of Insurance. Any of Trade Contractor's insurance required in accordance with this Agreement shall contain a provision whereby Construction Manager shall be provided with at least 30 days written notice prior to cancellation of such insurance.

(k) Certificates of Insurance. The Trade Contractor shall, prior to commencement of its Work or entering the Project site, and thereafter upon renewal or replacement of each required policy of insurance, provide a certificate of insurance in triplicate, including any endorsements required to be attached thereto, certifying the coverage as set forth in this Article. Any certificate of insurance issued pursuant to this Agreement shall include Construction Manager's project name and number. Trade Contractor shall deliver to Construction Manager such certificate(s) of insurance evidencing the coverage required in this Trade Contract within forty-eight (48) hours after request. If Trade Contractor fails to provide such certificate(s), Construction Manager may withhold monthly progress payments and

Trade Contractor may be asked to discontinue its Work. Construction Manager may obtain such insurance for Trade Contractor and pay the premiums thereon. If Construction Manager does so, then Trade Contractor shall repay Construction Manager on demand for any premium costs incurred by Construction Manager to secure coverage, or Construction Manager may deduct the amount of such premiums from any sums that may become due to Trade Contractor under this Trade Contract. Construction Manager has no obligation to obtain such insurance for Trade Contractor, and Construction Manager's failure to do so shall in no way relieve Trade Contractor of its obligations to provide such insurance.

(l) **Waiver.** To the fullest extent permitted by the law governing this Agreement, Trade Contractor agrees to waive any right of action against Construction Manager, Owner, both of their agents, officers, directors, and employees, and anyone else required by Owner in its Contract Documents with Construction Manager (collectively the "Waiver Parties") for recovery of damages to the extent covered by insurance, or that should have been covered by insurance as required by either this Agreement or the Contract Documents between Owner and Construction Manager. Trade Contractor agrees to waive all rights to subrogate against the Waiver Parties and shall require all insurance required of it in accordance with this Agreement, or the Contract Documents between Owner and Construction Manager, to provide a waiver of subrogation endorsement in favor of the Waiver Parties.

(m) **Downstream Requirements.** Trade Contractor shall require its Trade Subcontractors of all tiers to meet the same insurance obligations as are required of it in this Agreement, except as it relates to limits of liability.

ARTICLE 7

WARRANTY

7.1 The Trade Contractor agrees to promptly make good, without cost to the Owner or Construction Manager, any and all defects, due to faulty workmanship and/or materials, which may appear within the guarantee or warranty period so established in the contract documents. If no such period be stipulated in the contract documents, then such guarantee shall be for a period of one (1) year from date of completion and acceptance of the work by the Owner. The Trade Contractor further agrees to provide any and all guarantees as required by the terms of the contract documents, as a condition precedent to final payment.

ARTICLE 8

CHANGES IN THE WORK

8.1 The Trade Contractor may be ordered in writing by the Construction Manager, without invalidating this Agreement, to make changes in the work within the general scope of this Agreement. These changes may consist of additions, deletions, or other revisions, the contract sum and the contract time being adjusted accordingly. The Trade Contractor, prior to the commencement of such changed or revised work, shall submit promptly to the Construction Manager written copies of any claim for adjustment to the contract sum and contract time for such revised work in a manner consistent with the contract documents.

8.2 Where changes in the work involve both additions and deletions, percentages for overhead and profit shall be applied to the net increase only of such values for labor and materials.

8.3 The amount to be paid by the Construction Manager for changes in the work, as outlined in

paragraph 8.1 above, shall be made on the basis of one of the following methods:

- (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 as noted in Article 12. Field overhead will not be considered as part of actual net cost, or
- (d) by the method provided in subparagraph 8.4.

8.4 If none of the above methods set forth in clauses 8.3 (a), 8.3 (b), 8.3 (c) is agreed upon, the Trade Contractor, provided he/she receives a written order signed by the Construction Manager shall promptly proceed with the work involved. 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. In such case, and also under clauses 8.3 (c) and 8.3 (d) above, the Trade Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a change order. Unless otherwise provided in the contract documents, cost shall be limited to the following: cost of materials including sales tax and cost of delivery, cost of 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. Pending final determination of cost, 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 or 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.

8.5 Construction Manager's Audit

(a) Construction Manager's duly authorized representative shall have access, at all reasonable times, to all Trade Contractor's personnel, books, records, correspondence, instructions, plans, drawings, receipts, vouchers and memoranda of every description pertaining to change for the purpose of auditing and verifying Trade Contractor's net cost of 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 two years after the completion and acceptance or termination of work.

8.6 For work performed by a Trade-Subcontractor, the Trade Contractor will be allowed to add 5% only and said Trade-Subcontractor mark-up shall not exceed the agreed upon percentages noted in Article 12 for overhead and profit.

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 and the Owner, or their authorized representatives. The Trade Contractor shall, within a 24-hour notice from the Construction Manager, proceed to take down all portions of the work and remove from the grounds or buildings, all materials, whether worked or unworked, which the Construction Manager, the Owner, or their authorized representatives shall condemn as unsound or improper, or as in any way failing to conform to the contract documents. The Trade Contractor shall make good at its own expense, all work damaged or destroyed thereby.

9.2 The Trade Contractor agrees, in the performance of this Agreement, to comply with all federal, state, municipal, and local laws, ordinances, codes and governing regulations, to pay all costs and expenses required thereby, to pay all fees, charges, assessments, and taxes, including sales and use taxes, and to pay all fringe and other benefits required by Agreement or law. The Trade Contractor shall comply with all federal, state, municipal and local employment and immigration laws and shall act in accordance with all rules, regulations and procedures which may be required to ensure full compliance with such laws and, if requested or required by Construction Manager and/or Owner, the Trade Contractor shall certify in writing that it is in compliance with all such laws.

9.3 The Trade Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights 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, but if the Trade Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Construction Manager.

9.4 Should the Trade Contractor become insolvent, or at any time, refuse or neglect to supply a sufficiency of properly skilled workers, or equipment and materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in any performance of any of the Agreements herein contained, the Construction Manager shall be at liberty, after 48 hours written notice to the Trade Contractor, to provide any such labor, equipment, and materials and deduct the cost thereof, from any money then due or thereafter to become due to the Trade Contractor, under this Agreement. If such refusal, neglect, or failure is sufficient ground for such actions, the Construction Manager shall also be at liberty to terminate the employment of the Trade Contractor. Consequently, the Construction Manager may enter upon the premises to take possession, for the purpose of completing the work included under this Agreement, of all materials, tools, and appliances thereon, and to employ any other person or persons to finish the work and provide the materials therefor. In case of such discontinuance of the employment, the Trade Contractor shall not be entitled to receive any further payment under this Agreement until the said work shall be wholly finished. If the unpaid balance of the amount to be paid under this Agreement shall exceed the expense incurred by the Construction Manager in finishing the work, such excess shall be paid by the Construction Manager to the Trade Contractor. If such expense shall exceed such unpaid balance, the Trade Contractor shall pay the difference to the Construction Manager. The expense incurred by the Construction Manager, as herein provided, either for furnishing materials, or finishing the work, and any damage incurred through such default, shall be chargeable to the Trade Contractor. 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 9.4.1. hereof.

9.4.1 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. 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 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 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 notify the Construction Manager's representative on the jobsite of all accidents which may occur to persons or property and shall provide the Construction Manager's representative with a copy of all accident reports on appropriate forms. All reports shall be signed by the Trade Contractor or his authorized representative and submitted within five (5) days of 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 strikes, shall take whatever action is required in order to prevent the disruption of 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 sublet the whole or any part of the work to be performed hereunder, without the written consent of the Construction Manager. In the event of such a consent, a Trade-Subcontractor must comply with all the requirements of this Agreement.

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 should 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 his work and will immediately replace all damaged and defective work.

9.13 The Trade Contractor agrees to maintain an adequate force of experienced workers and the necessary materials, supplies, and equipment to meet the requirements of the Construction Manager and other trades in order to maintain construction progress schedules, as established by the Construction Manager and Owner. In the event that his/her force is, in the judgment of the Construction Manager, inadequate to meet the established schedules during the regular working hours, the Trade Contractor agrees to work sufficient overtime hours or increase their work force to meet such schedules at no extra cost to the Construction Manager or Owner. If for reasons not already stated, the Construction Manager requires and directs the Trade Contractor to work overtime, including Saturdays, Sundays or Holidays, the Trade Contractor will be reimbursed the net premium rate only. The net premium rate is understood to mean the actual premium labor cost, including applicable taxes and wage additives required by trade Agreement or by Law, but without additives for overhead, labor efficiency, or profit.

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 If the Trade Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner, Construction Manager, or the Architect/Engineer, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Trade Contractor's control, or by delay authorized by the Owner or Construction Manager, or by any other cause which the Construction Manager determines may justify the delay, then the contract time shall be extended by change order for such reasonable time as the Construction Manager and Owner may determine. In the event that a conflict exists between this section (9.16) and a like clause contained in a document having higher precedence, such like clause shall have preference to the extent of the conflict.

9.17 Right-to-Know - 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 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 IMPLAIDER OR OTHERWISE, AND THE OWNER HAS NOT WAIVED RIGHT TO TRIAL BY JURY, THIS PROVISION SHALL BE DEMAED TO BE OF NO FORCE AND EFFECT.

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 contract document between the Owner and the Construction Manager 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 contract documents between the Owner and the Construction Manager is inconsistent with any provision of this Agreement, this Agreement shall govern.

10.2 The Construction Manager shall pay the Trade Contractor by electronic funds transfer within seven (7) days after receipt of payment by the Owner, as noted in Article 3 of this Agreement. 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 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 it's account.

10.3 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 insure 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) and their implementing regulations at 41 CFR Chapter 60.

11.2 The E.F.O. Certificate of Assurance (Exhibits A, and where applicable A-1 through A-4) is attached hereto and incorporated herein as if made a part hereof.

ARTICLE 12

ALTERATIONS

12.1 The overhead and profit allowable under Article 8.3. A, 8.3 B, 8.3 C is:

15% O/H and profit on work performed by its own forces
5% OH&P on subcontractors

12.2 Baker Concrete National Agreement terms.

The below listed conditions are made a part of this Contract.

TRADE CONTRACTOR AGREEMENT

Article 3.6

In line 2, add "for the amounts paid to the Trade Contractor," before "arising out of".

Article 5.1

In line 6, add "REASONABLE" before "ATTORNEYS' FEES".

In line 8, delete "(1)".

In line 10, replace "(2)" with "BUT ONLY".

Article 5.2

In lines 4-5, delete "providing such giving... injury or damage".

Article 5.3

In lines 3-4, replace "from and any all against" with "to the extent and proportion that".

In line 4, add "reasonable" before "attorneys' fees".

In line 4, replace "arising out of or resulting" with "arise out of or results".

Article 6.2

In line 7, before "Failure to provide.. Contractor for cause", add "The request to furnish Performance and Payment Bonds must be made prior to the start of any Work, or the request shall not be valid".

Article 6.3 (a)-3rd paragraph

In line 3, add "or qualify as a permitted self-insurer" after "jurisdiction".

Article 6.3 (b)

In line 9, add "Trade Contractor shall maintain" before "Products".

In line 9, replace "shall remain in effect" with "for an additional five (5) years".

In lines 10-14, delete "and from the.. products-completed operations coverage".

Article 6.3 (d)

In line 6, add "or excess" after "umbrella".

Article 6.3 (e)

In line 3, add "or excess" after "umbrella".

In line 9, replace "CG 20 10 10 01" with "CG 20 33 10 01".

In lines 18-19, delete "The limits of.. the Additional Insureds".

Article 6.3 (f)

In line 3, replace "\$50,000" with "\$100,000".

Article 6.3 (k)

In line 6, replace "forty-eight (48) hours" with "two (2) business days".

Article 9.2

At the end of the Article add the following: "The Subcontractor is not required to ascertain that the plans and specifications are in accordance with applicable building codes, but any nonconformity discovered by or made known to the Subcontractor shall be reported promptly to the Construction Manager."

Article 9.12

At the end of the Article add the following: "Notwithstanding the above, the Subcontractor shall not be liable for or responsible for the costs associated with correcting any damages or loss to the Work due to causes beyond the Subcontractor's control, but may be required by the Construction Manager to correct such damaged Work in accordance with terms and conditions set forth in Article 8 of this agreement."

Article 9.19

In line 1, add "UNLESS THE PARTIES AGREE OTHERWISE IN WRITING AND," before "TO".

In line 1, replace "TRADE CONTRACTOR HEREBY WAIVES" WITH "PARTIES HEREBY WAIVE".

In line 2, replace "THE TRADE CONTRACTOR" with "EITHER OF THE PARTIES".

In line 7, replace "THE TRADE CONTRACTOR" with "BOTH PARTIES".

In line 7-8, replace "THE TRADE CONTRACTOR HEREBY REPRESENTS" with "BOTH PARTIES HEREBY REPRESENT".

In line 10, replace "THE TRADE CONTRACTOR FURTHER REPRESENTS THAT IT HAS" with "BOTH PARTIES FURTHER REPRESENT THAT THEY HAVE".

In line 11, add "THEIR OWN" before "INDEPENDENT".

Electronic Funds Transfer is requested for payments due Baker Concrete Construction; waivers shall be provided after the receipt of the payment.

ARTICLE 13

COMPLETE AGREEMENT

13.1 This Agreement, together with all documents, specifications, drawings, incorporated herein by reference, constitute 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.

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

If any provision of the contract documents shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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

In the presence of

Michael S. Smith
Witness

Baker Concrete Construction Inc
Trade Contractor
Accepted by: *[Signature]*

(Signature)

Name: E. Todd Wilkowski (Print name)

Title: General Manager

Date: 9-16-12

Gilbane Building Company
Construction Manager

Amelia Miller
Witness

By: *[Signature]*
Craig A. Wagner
Purchasing Agent

Date: 9/6/2012

Item	Job Number	Cost Code	Type	Description	Amount
1	185663000	00303300	4115	Structural concrete	6,998,065.00
Total Amount of Order					6,998,065.00

1 IN THE COURT OF COMMON PLEAS
2 FRANKLIN COUNTY, OHIO

3 JAMES DANIEL HUGHES,
4 et al.,

5 Plaintiffs,

6 vs.

CASE NO. 13 CV 004435

7 CT CORPORATION, et al.,

8 Defendants.

9 * * *

10 IN THE COURT OF CLAIMS OF OHIO

11 JAMES DANIEL HUGHES,
12 et al.,

13 Plaintiffs,

14 vs.

CASE NO. 2012-09059

15 THE OHIO STATE UNIVERSITY,

16 Defendant.

17 * * *

18 Videotaped deposition of BRYAN MONESI,

19 Witness herein, called by the Plaintiffs for

20 cross-examination pursuant to the Rules of Civil

21 Procedure, taken before me, Beverly W. Dillman, a

22 Notary Public in and for the State of Ohio, at

23 1590 North High Street, Fifth Floor, Columbus,

24 Ohio, on Tuesday, July 30, 2013, at

25 1:04 o'clock p.m.

* * *

EXHIBIT
F

1 hours on the day of the accident, and then he --

2 A. Did he?

3 Q. Yes. And then it was punched in for
4 eight even hours for the two days after that?

5 A. I chose to pay him for being -- he
6 did not work those days.

7 Q. That's what I was gonna ask.

8 A. I chose -- that was just out of my
9 own choice to pay him. I didn't really feel
10 like -- he is owed something. I really don't
11 believe that he did anything wrong in this case.
12 I mean, that's my opinion.

13 Q. Okay. So I respect the fact that
14 you, as his employer, chose to pay him for two
15 days after the accident, understanding there was
16 most likely emotional strain on Isaac?

17 A. Uh-huh.

18 Q. But what you're saying is --

19 MR. TAYLOR: Yes?

20 THE WITNESS: Yes, sorry. I'll --

21 BY MR. CRANDALL:

22 Q. What you're saying is he did not
23 physically drive a truck on September 6th or
24 September 7th for your company?

25 A. No, sir.

1 been horrible for our family, it's been horrible
2 for all the parties involved. James Daniel
3 Hughes, it's a horrible situation to be in. It's
4 a horrible situation. I can't even imagine
5 what's going through Isaac's mind.

6 But in regards to paying him for
7 those two days, I just felt it was necessary to
8 not put a financial burden because I didn't know
9 what -- what the end result of -- was he gonna be
10 off work for a while or not. I wasn't concerned
11 with him as a driver. He has been a Model A
12 driver since the day I hired him.

13 Q. Okay. But as it pertains to whether
14 or not he was at fault, he was negligent, he was
15 responsible for running over Daniel, you don't
16 have an opinion on that either way, or do you?
17 And if you do, I'd like to hear it.

18 MR. TAYLOR: I'll just object.
19 Calls for a legal conclusion.

20 But if you know, you can answer the
21 question. Do the best you can.

22 THE WITNESS: I think, to some
23 extent, there is a lot of -- all the parties here
24 have some -- some sort of liability, including
25 your client too. Now, what percent of that

1 liability is there? I can't answer that.

2 MR. DEMARCO: I move to strike,
3 legal conclusion.

4 Go ahead.

5 BY MR. CRANDALL:

6 Q. And are you including --

7 MR. WEBBER: Join in that.

8 MR. TAYLOR: I'll object. Calls for
9 a legal conclusion.

10 If you know.

11 THE NOTARY: I didn't get your
12 question. And are you including who?

13 BY MR. CRANDALL:

14 Q. Mr. Hinton in that, in your answer?

15 A. Well --

16 MR. TAYLOR: Just a continuing
17 objection.

18 Go ahead.

19 THE WITNESS: -- I guess to some
20 extent. I don't know that I would place any
21 blame on -- on Isaac as a driver. I think he did
22 the best job he could in the working conditions
23 that -- that were given, to turn into that job
24 site safe. I believe. He has done it a hundred
25 times -- thousands of times. And he was at that

1 After that, it changed.

2 Q. Do you believe that even without
3 a -- even with the sidewalk open, even with no
4 traffic control officer, even without a flagger,
5 if your trucks were allowed to take a left that
6 day, whether that would have provided Isaac
7 better visibility --

8 A. Yes.

9 Q. -- to see somebody there?

10 A. Yes.

11 MR. DEMARCO: Objection.

12 MR. TAYLOR: Let him finish the
13 question.

14 Calls for speculation.

15 Go ahead.

16 BY MR. CRANDALL:

17 Q. Do you -- do you have an opinion,
18 like you did earlier, as to whether or not this
19 accident would have been avoided had Isaac been
20 able to take a left, instead of a right into the
21 site that day, all things being the same?

22 MR. VALENTINE: Objection.

23 MR. DEMARCO: Objection.

24 MR. TAYLOR: Objection.

25 Go ahead, if you know.

1 MR. DEMARCO: Same objection.

2 THE WITNESS: I think that a

3 combination of things would have prevented the

4 accident. I wouldn't blame -- I wouldn't be able

5 to say any one action could have stopped this

6 accident. I think turning into the project from

7 High Street would have probably prevented it. I

8 think an officer there to allow vehicles in and

9 out of the project would have prevented it. And

10 I think the sidewalk needed to be -- remain

11 closed. It's just -- I think, in my opinion,

12 number one, the sidewalk being opened allowed for

13 students that don't listen, or do a very good job

14 of listening, to go down the sidewalk.

15 He would -- he would not have --

16 even coming -- going east on Woodruff from Tuttle

17 Park, I don't believe Isaac would have ran over

18 James Daniel Hughes if the sidewalk was closed.

19 MR. VALENTINE: Move to strike the

20 entire answer.

21 MR. WEBER: Objection.

22 THE WITNESS: That's just my

23 opinion.

24 MR. DEMARCO: Move to strike.

25 (Thereupon, Mr. Bricker left the

1 conference room.)

2 BY MR. CRANDALL:

3 Q. I want to ask you a question about
4 opening the sidewalk. It had been closed for a
5 period of time --

6 A. Uh-huh.

7 Q. -- when McDaniel's -- when you were
8 hauling for McDaniel's?

9 A. That's correct.

10 Q. This -- it was obviously open and
11 obvious that the sidewalk was closed. There were
12 signs there, there were barriers there that you
13 saw?

14 A. Uh-huh.

15 Q. Correct?

16 MR. TAYLOR: Yes?

17 THE WITNESS: Yes.

18 BY MR. CRANDALL:

19 Q. It was aware to you when you
20 visited; it was obviously -- common sense would
21 tell you -- aware to the students who visited --

22 A. Yes.

23 Q. -- that that sidewalk was closed and
24 they were to cross the street, go on the north
25 sidewalk and, if they needed to, cross the street