



O&G INDUSTRIES, INC.

112 Wall Street
Torrington, Connecticut 06790
Phone: 860-489-9261 Fax: 860-496-4286

Construction Management Trade Contract

Contract No. «ContractNumber»

Cost Control No. «ItemNumber»

**Cutler Elementary School
Groton, Connecticut**

TRADE CONTRACTOR:

«ToCompany»
«ToAddressLine1»
«ToAddressLine2»
«ToAddressCity», «State», «Zip»

RETAINAGE: 5%

NON-RESIDENT S/T RETAINAGE: Y / N

PYMT/PERFORM BOND: «Bonds»

OWNER:

Town of Groton
45 Fort Hill Road
Groton, CT 06340

ARCHITECT:

Perkins Eastman Architects
677 Washington Blvd., Suite 101
Stamford, CT 06901

This Agreement made _____, by and between «ToCompany» hereinafter called "Trade Contractor" a corporation, partnership, limited liability company, individual proprietorship (*circle applicable business form*) and O&G Industries, Inc., hereinafter called "Construction Manager" for the above-referenced "Project".

WITNESSETH: That Trade Contractor and Construction Manager for the consideration hereinafter named, agree as follows:

SCOPE OF WORK: FURNISH all labor, material, and equipment necessary to complete all work of Bid Package No. xxxx, all in accordance with the contract documents listed in Exhibit A, attached.

The following Allowances are made a part of this Agreement:

Specifically included in this Contract are the following:

Excluded from this contract are the following:

The following Alternates have been accepted by the Owner are hereby incorporated into the contract:

The following unit prices apply:

The following labor rates shall be utilized for change orders:

TRADE CONTRACT AMOUNT:

Trade Contractor shall complete the Work under this Trade Contract for the lump sum Trade Contract Price equal to «ContractAmount».

	Base Bid:	\$0.00
	Alternates:	\$0.00
	Allowances:	\$0.00
	Lump Tax:	\$0.00
:	TOTAL:	<u> </u> «ContractAmount»

This Contract/ Trade Contractor Agreement continues in the attached General Conditions, as if fully set forth herein.

Please note: No payments will be made on this contract until the signed copies have been returned to O&G Industries, Inc. Any and all work performed shall be in conformity with and governed by this contract, including all terms and conditions.

TRADE CONTRACTOR:
«TOCOMPANY»

CONSTRUCTION MANAGER:
O&G INDUSTRIES, INC.

Signed: _____
By: _____
Date: _____
Witness: _____

Signed: _____
By: Aaron L. Mednick, Vice-President
Date: _____
Witness: _____

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1. TRADE CONTRACTOR'S WORK

1.1 Definitions

The following terms as used in this Trade Contract shall have the following meanings:

- (a) "Applicable Law" shall mean means all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court or governmental agency or authority, and rules, regulations, codes, orders, interpretations of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, or court having jurisdiction over the Project or any activity conducted at or in connection with the Project or in connection with the Trade Contract.
- (b) "Architect" is the party identified as "Architect/Engineer" on page 1 of this Trade Contract.
- (c) "Construction Manager" shall mean O&G Industries, Inc.
- (d) "Contract Documents" shall have the meaning set forth in Section 2.1 of this Trade Contract.
- (e) "Owner" is the party identified as "Owner" on page 1 of this Trade Contract.
- (f) "Owner Contract" shall mean the contract between the Owner and Construction Manager, including all documents incorporated therein.
- (g) "Project" is the construction project identified on page 1 of this Trade Contract.
- (h) "Project Schedule" shall have the meaning set forth in Section 3.1 of this Trade Contract.
- (i) "Trade Contractor" is the party identified as "Trade Contractor" on page 1 of this Trade Contract.
- (j) "Trade Contractor-subcontractor" shall mean lower tier vendor, supplier, materialmen, consultant, contractor, subcontractor or other person or entity performing a portion of the Work for Trade Contractor hereunder and/or providing equipment or services directly or indirectly in connection with the Work or Trade Contract.
- (k) "Trade Contract Price" is the amount identified as "Trade Contract Amount" on page 1 of this Trade Contract.
- (l) "Work" shall have the meaning set forth in Section 1.2 of this Trade Contract.

1.2 Work Defined

Trade Contractor shall perform all work required by this Trade Contract, under the general direction of Construction Manager, and shall furnish all supervision, labor, materials, tools, equipment and all other items necessary for the completion of the work described in **Exhibit A** and work incidental thereto, in strict accordance and full compliance with the terms of this Trade Contract and the Contract Documents described herein, to the satisfaction of the Owner and Construction Manager (hereinafter, the "Work").

1.3 Trade Contract Includes All Items Necessary to Complete Work

Trade Contractor and its Subcontractors shall strictly comply with all requirements of the Trade Contract in the performance of the Work and other activities in connection with the Trade Contract. Trade Contractor acknowledges and agrees that it can perform and complete the Work in strict compliance with the Trade Contract requirements, including Trade Contract Price and Project Schedule, and acknowledges and agrees that it can do so even though certain drawings, specifications, addenda and bulletins, may not be fully developed at the time of contracting. Trade Contractor further acknowledges and agrees that the Work includes the provision of all equipment, components, systems, materials, documentation and other services and items required to perform the Work and make it complete, functional and/or operational, notwithstanding the fact that each such service or item may not be expressly mentioned in the Contract Documents.

1.4 Investigation of Site and Contract Documents

Trade Contractor represents that it has, or has had, full opportunity to examine the Project site and Contract Documents, that it has satisfied itself as to the requirements of the Work and all conditions which may affect the Work, including but not limited to the availability and costs of labor, services, equipment, materials, supplies and other items required for the Work, the observable condition of the Project site and access thereto to perform the Work and actual and anticipated local weather conditions; that the Trade Contract Price and Project Schedule have been determined with due regard for all such requirements and conditions which do or may affect the Work; and, that its entry into the Trade Contract has not been induced either wholly or in part by any promises, representations or statements by or on behalf of Construction Manager, Owner and/or the Architect, other than those set forth in the Trade Contract. Trade Contractor acknowledges and accepts the risk of mistake or error with respect to all matters within the scope of its Project investigation, and agrees that it shall not be entitled to, and shall make no claim for, any additional compensation or damages of any kind or character or an extension of time for performance should any requirements or conditions applicable to the Work be different from or in addition to those identified by Trade Contractor through such reasonable investigation.

1.5 Duty to Inspect

Trade Contractor shall inspect the work provided by others onto which the Work is to be placed or to which the Work is to be applied or attached and shall notify Construction Manager in writing of any observable defect or other detrimental condition in any such work prior to the performance of the affected Work. If Trade Contractor fails to so notify Construction Manager, Trade Contractor shall be deemed to have accepted the condition of such work as suitable for its Work. Trade Contractor shall be liable for any added costs or damage resulting from its performance of any Work involving any unsuitable work provided by others of which Trade Contractor has not notified Construction Manager as required, including any re-performance and related costs of correction as well as any additional costs incurred by the Construction Manager, Owner or their other contractors.

1.6 Coordination with Other Work

Trade Contractor agrees that Owner and Construction Manager shall have the right to perform or have performed other work in or about the Project site during the time when Trade Contractor is performing its Work. Trade Contractor shall: coordinate its Work activities at the Project site with those of Construction Manager, Owner, and their other contractors; afford a reasonable opportunity for the introduction and storage of materials and the execution of such work; and make every reasonable effort to enable both its Work and such other work to be completed without hindrance or interference. Trade Contractor shall notify Construction Manager in writing of any potential conflicts between its Work and such other work and if requested by Construction Manager shall participate in the preparation of coordination drawings in areas of congestion. In situations where a conflict arises between the Trade Contractor's Work and the work of others, Construction Manager will determine in its sole discretion which work has the highest priority and direct the performance of the Work accordingly. Trade Contractor shall not be entitled to an adjustment of the Trade Contract Price or an extension of time for its field coordination activities as the Trade Contractor shall anticipate and provide for such activities in the Trade Contract Price and agreed time for performance.

2. CONTRACT DOCUMENTS

2.1 Contract Documents Defined

The Trade Contract is comprised of the following "Contract Documents": the Trade Contract Agreement; the Trade Contract Exhibits (including without limitation, the plans and specifications referenced therein); and the Owner Contract as it relates (directly or indirectly) to the Work to be performed by Trade Contractor under the Trade Contract. Trade Contractor assumes toward the Construction Manager and the Owner all the obligations that the Construction Manager assumes toward the Owner in the Owner Contract with respect to the Work to be performed by Trade Contractor under the Trade Contract. Construction Manager shall have the benefit of all rights, redress and remedies against Trade Contractor that Owner has against Construction Manager under the Owner Contract. Notwithstanding the foregoing, the payment and dispute resolution provisions contained in the Owner Contract are specifically excluded from the Contract Documents.

2.2 Duty to Review Contract Documents

Trade Contractor shall carefully study and compare the Contract Documents and notify Construction Manager in writing of any error, inconsistency, omission or ambiguity prior to executing any affected Work. The Trade Contractor shall notify the Construction Manager in writing within three (3) business days of the Trade Contractor's discovery of any error, inconsistencies or omissions in the Contract Documents. Trade Contractor shall not proceed with the Work or phase of the

Work affected by such document error until Trade Contractor has notified Construction Manager and has, in turn, received appropriate written instructions or clarifications from Construction Manager. Construction Manager's determination of the Trade Contract requirements in view of the error, inconsistency, omission or ambiguity shall be final and Trade Contractor shall perform the Work consistent with that determination, subject to dispute resolution in this Trade Contract. Trade Contractor shall be liable for any added costs or damage resulting from its performance of any Work involving an error, inconsistency, omission or ambiguity in the Contract Documents that has not been reported to Construction Manager, including any re-performance and related costs of correction as well as any additional costs incurred by the Construction Manager. Nothing in this paragraph shall relieve the Trade Contractor of responsibility for its own errors, inconsistencies and omissions.

2.3 Contract Documents Interpreted Cohesively

The Contract Documents are intended to be read as a whole, and any Work required by one part and not mentioned in another (e.g., item shown in drawing and not mentioned in the specifications, or mentioned in the specifications and not shown in drawing), shall be executed to the same extent as though required by all. The addition, omission or incorrect placement of a word or character in one part of the Trade Contract shall not change the intent of the Trade Contract as a whole, and shall not constitute the basis for a claim by the Trade Contractor for an increase in the Trade Contract Price or an extension of time within which to perform and complete the Work.

2.4 Highest Quality Prevails

In the event of a conflict between one or more provisions of the Contract Documents, the provision imposing the more demanding term, condition, duty or standard of performance, or the greater limitation on the nature and type of relief or damages allowed to Trade Contractor, shall control. A conflict exists in the Contract Documents when the same subject matter is addressed by two or more provisions of the Contract Documents in a manner that cannot be reconciled to give effect to all provisions. In the various parts of the Contract Documents where reference is made to applicable codes and standards, the Work shall, except as otherwise specified, conform to the latest issue of the referenced code or standard in effect at the time the Work is performed.

3. TIME OF PERFORMANCE AND COMPLETION

3.1 Project Schedule

The Construction Manager will develop the Project Schedule that will schedule and coordinate the times required for each area of work on the Project, including the Work. Trade Contractor shall participate and cooperate with Construction Manager in scheduling the times and sequences required to perform Trade Contractor Work, and Trade Contractor agrees to perform its Work in accordance with the Project Schedule, as it may be revised and amended from time to time by Construction Manager. Trade Contractor further agrees that it shall comply with the Bid document Construction Schedule and requirements set forth in the contract documents, including, without limitation, specification 00 31 13 Project Schedule and Phasing, .

3.2 Duty to Diligently Maintain Schedule

Except as otherwise provided elsewhere in the Contract Documents, Trade Contractor shall commence the Work in accordance with the Project Schedule immediately upon receipt of verbal or written notice to proceed from Construction Manager. Trade Contractor shall diligently and continuously prosecute its Work or any portion thereof in an efficient fashion and at a rate so as not to cause delay in the progress of the work of Construction Manager, Owner, or their other contractors. Trade Contractor shall maintain and update on at least a monthly basis (or more frequently if requested) a resource loaded, (and cost loaded if requested) critical path method schedule for the Trade Contractor's Work, which depicts Trade Contractor's Work activities with logic ties for preceding/restraining work, duration, crew size, (and cost if requested.)

3.3 Failure to Maintain Schedule

Trade Contractor acknowledges that the dates required in the Project Schedule for the performance and completion of the Work are essential conditions of the Trade Contract and agrees that Trade Contractor's failure to perform and complete the Work consistent with such dates shall constitute a material violation of the Trade Contract. Trade Contractor represents that it has taken into consideration and made allowances for all hindrances and delays incident to its Work as provided herein.

3.4 Duty to Coordinate with Project Schedule

In support of the Project Schedule, Trade Contractor shall, as a condition precedent to Construction Manager's obligation to process Trade Contractor's first estimate for payment, furnish Construction Manager with an itemized breakdown of Trade Contractor's Work, which shall include the anticipated sequence of the Work and durations in terms of days and man-hours for the work activities necessary to complete the Work in the time required to support the Project Schedule. Trade Contractor represents that it shall: (i) prepare documents that are feasible and realistic for the planning, scheduling and coordination of

the Work, and (ii) prepare schedules, updates, revisions and reports that accurately reflect Trade Contractor's reasonable expectations as to the sequence of activities, duration of activities, productivity or efficiency, projected and actual completion of any Work item or activity, and delays or problems expected or encountered and specified float time, including as necessary, accounting for any direction provided by Construction Manager as set forth herein.

3.5 Right of Construction Manager to Dictate Schedule

Construction Manager shall be entitled to decide the time, order and priority for performance of the various portions of Trade Contractor's Work to the extent necessary, in Construction Manager's judgment, to assure Construction Manager's compliance with the scheduling requirements imposed on Construction Manager under the Owner Contract, and to direct the performance of the Work accordingly. Trade Contractor shall not be entitled to an adjustment of the Trade Contract Price or an extension of time in connection with any such direction by Construction Manager as the Trade Contractor shall anticipate and provide for such activities in the Trade Contract Price and agreed time for performance.

3.6 Duty to Recover Schedule Delays

If Construction Manager determines that Trade Contractor has fallen behind in the progress of the Work or is in danger of falling behind at its then current rate of progress, or is responsible for any Project Schedule delays, Construction Manager may direct Trade Contractor on written notice to take the steps Construction Manager deems necessary to improve the rate of progress of the Work, including requiring Trade Contractor to increase its labor force, number of shifts and/or overtime operations, days of work, or to provide additional equipment or materials. Trade Contractor shall work overtime, Saturdays and Sundays at the direction of the Construction Manager without additional cost to the Construction Manager if in the judgment of the Construction Manager such overtime and Saturday and Sunday work is necessary due to delays caused by and within the control of the Trade Contractor. Within forty-eight (48) hours of such written notice from Construction Manager, Trade Contractor shall submit for Construction Manager's approval a recovery plan composed of a schedule and a safety assessment to demonstrate the manner by which Trade Contractor will implement the required steps to attain the required rate of progress while maintaining an injury free environment. Trade Contractor will implement the recovery plan immediately upon Construction Manager's approval. If Construction Manager determines that Trade Contractor's plan will not attain the required rate of progress, Construction Manager may, in its sole discretion and without further notice: (1) direct the Trade Contractor to take the steps Construction Manager directs in that regard and perform the Work accordingly, all without additional cost to the Construction Manager; or (2) perform the Work as Construction Manager deems necessary to attain the required rate of progress. Construction Manager may deduct from any payment due Trade Contractor or collect directly from Trade Contractor on demand all damages incurred or suffered by Construction Manager in connection with Trade Contractor's delay in the progress of the Work or to the Project Schedule, including any damages assessed against Construction Manager under the Owner Contract.

3.7 Right of Construction Manager to Inspect and Review Work

Trade Contractor shall at all times provide Construction Manager, Owner, the Architect and their authorized representatives safe and sufficient facilities and access to review or inspect the Work on the Project site and, upon request, at Trade Contractor's and its Trade Contractor-subcontractor's offsite facilities where any Work is being performed. Construction Manager shall have no obligation to review or inspect Trade Contractor's Work, and any such review or inspection shall not relieve Trade Contractor of its obligations under this Trade Contract. Construction Manager, along with the Owner and Architect, shall determine the requirements of the Contract Documents in connection with the Work and whether the Work has been performed and completed in accordance with those requirements. These determinations shall be final and Trade Contractor shall perform the Work consistent with them, subject to dispute resolution provisions set forth herein.

3.8 Rejected Work

Construction Manager, Owner or the Architect may reject any Work performed or equipment, materials, supplies or other items furnished by Trade Contractor that are determined not to comply with the requirements of the Contract Documents. Within twenty-four (24) hours after receiving Construction Manager's notice rejecting any Work performed or equipment, materials, supplies or other items furnished, Trade Contractor shall take down the rejected Work and remove the rejected equipment, materials, supplies or other items from the Project site. Trade Contractor shall promptly re-perform any rejected Work and replace any rejected equipment, materials, supplies or other items as necessary to comply with the requirements of the Contract Documents. All costs associated with re-performing rejected Work and replacing rejected equipment, materials, supplies or other items including, without limitation, any costs incurred to correct any work of Construction Manager, Owner or their other contractors as required in connection with any rejected Work, shall be borne by the Trade Contractor without any increase in the Trade Contract Price or time for performance of the Work.

3.9 Supply Priority

In the event of a partial failure of the Trade Contractor's sources of supply of the equipment, materials, supplies or other items to be furnished under the Contract Documents, whether due to allocation or otherwise, the Trade Contractor shall make all reasonable efforts to fully meet its obligations under this Trade Contract prior to making any allocations among the Trade Contractor's other customers.

3.10 Completion and Acceptance

The Work will be deemed substantially and finally complete in accordance with the manner set forth in the Owner Contract, or earlier date agreed by Construction Manager in a written notice to Trade Contractor. Trade Contractor shall give written notice to Construction Manager upon considering its Work substantially complete, and shall provide to Construction Manager a punch list of remaining items to be performed to achieve final completion. Trade Contractor shall revise the punch list to include any additional items identified by Construction Manager and shall perform the punch list Work as directed by Construction Manager. Construction Manager may temporarily take possession of and use any part of the Trade Contractor's Work at any time prior to final completion of all the Work. The use or acceptance of part of the Work by Construction Manager as provided herein shall not relieve Trade Contractor of any of its responsibilities under the Trade Contract, nor shall it be construed to deem the Work substantially complete.

4. PROGRESS PAYMENTS

4.1 Schedule of Values

Within fifteen (15) days of the execution of this Trade Contract Agreement, Trade Contractor shall submit for Construction Manager's approval Trade Contractor's itemized schedule of values that allocates the Trade Contract Price to the various portions of the Work. The schedule of values shall be in the form and supported by data to substantiate its accuracy as required by the Contract Documents, or as Construction Manager may reasonably require. Upon acceptance by Construction Manager, Trade Contractor will use the schedule of values as the basis for its periodic applications for payment. If it is later determined that the schedule of values is unbalanced, the Trade Contractor shall revise and resubmit the schedule of values for Construction Manager's approval.

4.2 Payment Applications

Unless otherwise set forth by Construction Manager, on or before the earlier of the 25th day of each month, or five (5) days prior to the date, if any, in the Owner Contract for the submission of payment applications, Trade Contractor shall deliver to the Construction Manager, in the form and manner determined by the Construction Manager, a detailed statement showing value of work completed during the previous month utilizing the approved schedule of values, along with all substantiating data and information required by the Contract Documents or as reasonably requested by Construction Manager. The amount on each payment application shall be calculated based on the percentage of Work completed by Trade Contractor to the date of the application as approved by the Construction Manager, Owner and/or Architect. The amount of the payment shall be the sum of the proportionate value of completed Work based on Trade Contractor's approved schedule of values; less the following amounts:

- (1) retainage as set forth in the Owner Contract;
- (2) an additional 2% retainage pursuant to Section 8.2;
- (3) all previous payments;
- (4) all charges for materials and services furnished by Construction Manager to Trade Contractor; and
- (5) any other charges and deductions as provided for in the Trade Contract.

4.3 Unit Price Work

Where this Trade Contract Agreement anticipates that the Work shall be paid for at an agreed rate per unit of Work in place, then the Trade Contractor agrees that any unit prices stated herein shall represent payment for the work covered including Trade Contractor's overhead and profit and that the Owner, Architect/Engineer or Construction Manager may make a final and binding determination of the Work to be paid. All quantities stated herein are approximate. Actual payment quantities are subject to field verification by Owner and/or Construction Manager and acceptance of required documentation, and may vary significantly from original estimated quantities, and quantity variation will not be reason to renegotiate a unit price, unless required by Owner. It is Trade Contractor's responsibility to coordinate and verify units installed with the Owner's representative and provide such verification with each monthly payment application.

4.4 Payment for Stored Materials

Requests for payment for materials not incorporated in the Work but delivered to and accepted by Construction Manager and suitably stored (on or off the Project site), may be made, if at all, in accordance with the Contract Documents. Trade Contractor-subcontractor invoices itemizing respective quantities and unit costs of such stored material shall accompany all requests for payments for stored materials. At its option, Construction Manager may make payment for stored material by joint check to Trade Contractor and the applicable Trade Contractor-subcontractor and require as a condition precedent to payment for stored materials that a bill of sale, any necessary Uniform Commercial Code documentation and/or proof of proper insurance be furnished from Trade Contractor and the applicable Trade Contractor-subcontractor. Materials accepted by Construction Manager and stored off site must be at a bonded warehouse, unless stored at the Trade Contractor's premises with Construction Manager's approval. All such stored materials shall be fully insured, and segregated from other material identifiable with a clearly marked "Property of O&G Industries, Inc." label. Notwithstanding anything to the contrary set forth herein, Trade Contractor shall comply with the requirements for Stored Materials set forth in **Exhibit D**, attached hereto.

4.5 Payment Timing

If approved by Owner and Construction Manager, Construction Manager shall pay the net amount due to Trade Contractor within twenty-five (25) days after Owner pays the corresponding amount to Construction Manager under the Owner Contract. Trade Contractor expressly agrees that payment by Owner to Construction Manager for any Work performed by Trade Contractor is an express condition precedent to any payment by Construction Manager to Trade Contractor and that Construction Manager is under no obligation until and unless the Construction Manager has been paid by Owner. Payment by the Owner is also an express condition precedent to the liability of any surety on any payment bond furnished on behalf of Construction Manager as principal. The payment provisions of this Agreement are subject to the condition that the Construction Manager receive, in good funds from the Owner, progress payments in at least the amounts payable to the Trade Contractor on this Project for work performed by Trade Contractor. The Trade Contractor expressly accepts the risk that it will not be paid for work performed by it if the Construction Manager, for whatever reason, is not paid by the Owner for such work. Further, Trade Contractor agrees to provide Construction Manager with a duly executed "Interim Lien/Bond Waiver and Release" in the form annexed as **Exhibit E** as condition precedent to receipt of any progress payments.

4.6 Right to Withhold on Unverified Contractor

If Trade Contractor is a Unverified Contractor as defined in Connecticut General Statutes (C.G.S.) §12-430(7)(A)(iv), any amounts that constitute a hold back under C.G.S. §12-430(7)(D)(i), as required by said section, shall be deemed payments under this Trade Contract. Construction Manager shall withhold five percent (5%) of the total Trade Contract price from any non-resident Trade Contractor and shall remit such sum to the Connecticut Department of Revenue Services within thirty (30) days after completion of the Trade Contract. This withholding shall be in addition to any other rights to retention or withholding as may be set forth in the Trade Contract. Construction Manager may be relieved of this withholding obligation if the non-resident Trade Contractor provides a Resident Contractor or Verified Contractor Status Certification to the Construction Manager issued by the Department of Revenue Services. Notwithstanding anything to the contrary set forth herein, Trade Contractor shall comply with the requirements set forth in **Exhibit C**, attached hereto.

4.7 Right to Withhold and Set-off

Construction Manager may withhold the whole or any part of any payment to Trade Contractor to such extent as Construction Manager reasonably deems necessary to protect it from loss as a result of:

- (1) incomplete, defective or damaged Work not remedied;
- (2) Construction Manager backcharges;
- (3) claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Trade Contractor's Work;
- (4) damage to Construction Manager's, Owner's or their respective other contractors' work;
- (5) failure of Trade Contractor to make payments when due to Trade Contractor-subcontractors;
- (6) reasonable insecurity regarding Trade Contractor's intention or ability to continue with the proper and timely performance of the Work;
- (7) failure of the Trade Contractor to perform or comply with any of its obligations under the Contract Documents;
- (8) expenses arising from frivolous claims against Construction Manager; or
- (9) amounts due from Trade Contractor to Construction Manager for any other debt owed by Trade Contractor to Construction Manager.

No payment shall be required to be made which will reduce the contract balance below a sum which, in the reasonable opinion of the Construction Manager, will be adequate to fully cover the cost of completion and possible corrective work.

4.8 Payment to Trade Contractor Held in Trust

Trade Contractor shall promptly pay for all labor, services, equipment, materials, supplies and other items acquired, performed, furnished or used in connection with the performance of the Work covered by payments received from Construction Manager, and shall furnish evidence satisfactory to verify compliance with this requirement when requested by Construction Manager. All funds paid to Trade Contractor in connection with the Project constitute funds held in trust by Trade Contractor. Trade Contractor agrees to apply first to the payment of the following:

- (1) taxes owed by Trade Contractor based on labor, services, equipment, materials supplies and other items acquired, performed, furnished or used in connection with the performance of the Work;
- (2) Trade Contractor bond and insurance premiums;
- (3) Trade Contractor's labor, including without limitation benefits; and
- (4) Trade Contractor-subcontractors and any applicable Trade Contractor-subcontractor benefit funds.

4.9 Tax Obligations

Trade Contractor agrees to pay all taxes, fees and contributions on or measured by the income, gross receipts or assets of Trade Contractor or any of its Trade Contractor-subcontractors and all taxes, fees and contributions on or measured by employees or other labor costs of Trade Contractor or any of its Trade Contractor-subcontractors, including without

limitation all payroll or employment compensation tax, social security tax or similar taxes for Trade Contractor or any of its Trade Contractor-subcontractor's employees. Trade Contractor further agrees to pay all sales and use taxes, and all import, export and other customs duties, charges, levies and fees imposed or incurred in connection with the shipping and delivery of any equipment, materials, supplies or other items required for the Work to the Project site. In the event that Construction Manager should pay or be required to pay any of the foregoing items or any portion thereof, Construction Manager may deduct the amount from the Trade Contract balance or invoice Trade Contractor therefor. Trade Contractor shall pay any such Construction Manager invoice in full within five (5) days of receipt

4.10 Trade Contractor's Payment to Trade Contractor-subcontractors

Prior to submitting its first payment application, Trade Contractor shall provide Construction Manager with a statement identifying the name, address and telephone number of each known Trade Contractor-subcontractor. Trade Contractor shall update its statement with each monthly estimate for payment as required to identify any new Trade Contractor-subcontractors and any name, address or telephone number changes for existing Trade Contractor-subcontractors. Trade Contractor shall pay its Trade Contractor-subcontractors and material suppliers within fifteen (15) days of payment by the Construction Manager to the Trade Contractor for such labor performed or such materials furnished to the Project by such Trade Contractor-subcontractors or materialmen. Construction Manager may, in its sole discretion make payment for any portion of Trade Contractor's Work by joint check to Trade Contractor and the applicable Trade Contractor-subcontractor or benefit fund to which Trade Contractor has an outstanding obligation. Any payments made by Construction Manager by joint check as provided herein shall be deemed to have been made directly to Trade Contractor. Nothing in this Section shall act to create a contractual relationship between the Construction Manager and the Trade Contractor's subcontractors or materialmen, or other third party, but is solely for the benefit of and protection of the Construction Manager, and such subcontractors or materialmen or other third party shall have no cause or claim against the Construction Manager under or pursuant to this Trade Contract.

4.11 Payment not Acceptance or Waiver

A progress payment made by Construction Manager is not intended nor shall be construed as evidence that Trade Contractor has satisfied its obligations in connection with all or part of the Work covered by such payment. Construction Manager shall not by virtue of having made any such payment be deemed to have accepted any Work not meeting the requirements of the Trade Contract or to have waived any claims against Trade Contractor in connection therewith. All payments are provisional and any overpayment by Construction Manager to Trade Contractor shall be deemed to be a mistake of fact and shall be promptly repaid to Construction Manager upon demand. The acceptance by Trade Contractor of each progress payment from Construction Manager shall constitute a waiver and release by Trade Contractor of all claims of any kind against the Construction Manager as full payment for all Work performed and all claims of any kind up to the date of Trade Contractor's estimate for payment against which payment was made and accepted, excluding only Trade Contractor's entitlement to retainage withheld in connection with such payment, and all claims expressly reserved by Trade Contractor prior to such payment by strict compliance with the Notice requirements in this Trade Contract.

5. FINAL PAYMENT

5.1 Final Payment Application

Trade Contractor shall submit its final payment application when it has completed all of the Work, including punch list items, in accordance with all requirements of the Trade Contract as approved by the Construction Manager and Owner and/or Architect. Trade Contractor's final payment application shall include all substantiating data and information required by the Contract Documents or as reasonably requested by Construction Manager. Trade Contractor's final payment application shall show the Work as one hundred percent (100%) complete and shall be calculated in the same manner as Trade Contractor's periodic progress payments under this Trade Contract, provided that retention shall not be deducted to arrive at the net amount due. If approved by Owner and Construction Manager, Construction Manager shall pay the net amount due to Trade Contractor within twenty-five (25) days after Owner pays the corresponding amount to Construction Manager under the Owner Contract, provided all conditions precedent to final payment under the Contract Documents, including the following, have been met:

- (1) any conditions precedent in the Owner Contract to Trade Contractor's entitlement to final payment have been satisfied;
- (2) Trade Contractor's surety, if any, has consented in writing to the making of final payment;
- (3) Trade Contractor has provided Construction Manager with a statement that it has completed the Work and performed all other obligations as required under the Trade Contract through the date of its final estimate for payment;
- (4) Trade Contractor has provided Construction Manager with a statement that it has paid all federal, state, county and municipal taxes, duties and other amounts imposed by Applicable Law upon any labor, services, equipment, materials, supplies or other items acquired, performed, furnished or used in connection with Trade Contractor's performance of the Work, including, but not limited to, sales, use, gross receipts, excise, unemployment, and personal property taxes;

- (5) Trade Contractor has provided Construction Manager all as-built drawings, certifications, maintenance manuals, operating instructions, statement of estimates, reports and other final submittals; software; written guarantees and warranties; and bonds required to be provided by Trade Contractor under the Trade Contract; and
- (6) Trade Contractor has provided a duly executed "Final Lien/Bond Waiver, Release and Indemnity Agreement" in the form annexed as **Exhibit E** (Construction Manager may require a final waiver and release of liens and claims from Trade Contractor-subcontractors).

5.2 Payment from Owner Express Condition Precedent to Payment

Trade Contractor expressly agrees that payment by Owner to Construction Manager for all Work performed by Trade Contractor is an express condition precedent to final payment by Construction Manager to Trade Contractor and that Construction Manager is under no obligation until and unless the Construction Manager has been paid by Owner. Payment by the Owner is also an express condition precedent to the liability of any surety on any payment bond furnished on behalf of Construction Manager as principal. The payment provisions of this Agreement are subject to the condition that the Construction Manager receive, in good funds from the Owner, payments in at least the amounts payable to the Trade Contractor as its final payment. The Trade Contractor expressly accepts the risk that it will not be paid for work performed by it if the Construction Manager, for whatever reason, is not paid by the Owner for such work.

5.3 Acceptance of Final Payment is a Waiver and Release

Trade Contractor's acceptance of final payment from Construction Manager shall constitute a final waiver and release of all liens and claims by Trade Contractor against the Construction Manager and Owner arising out of or relating to the Trade Contract.

6. LABOR AND SUPERVISION

6.1 Skilled Labor Force

Trade Contractor shall engage a sufficient number of skilled workers to perform the Work promptly, diligently, and in accordance with the requirements of the Trade Contract. If requested by Construction Manager, Trade Contractor shall provide Construction Manager with copies of its policies regarding the furnishing of labor including copies of all wage agreements, working rules, and regulations, if applicable, affecting the Work. Trade Contractor warrants that it is now, and will continue to be, in full compliance with the Immigration Reform and Control Act of 1986 (IRAC), specifically including all of its I-9 employer verification provisions. Trade Contractor warrants that it will continue to properly train its staff regarding the execution and retention of these I-9 employment verification forms. Trade Contractor warrants that it has an I-9 verification policy which it implements throughout the company. Further, Trade Contractor agrees to indemnify and defend Construction Manager and Owner for any legal fees, public relations costs, work stoppages, and any damages resulting from Trade Contractor's employment of any unauthorized workers.

6.2 Technical Training and Commissioning

To the extent required by the Owner Contract, Trade Contractor shall provide all technical personnel required to startup, test, commission and operate any equipment and to test and use any material, supplies or other items used or supplied by Trade Contractor in connection with the Work and to instruct Construction Manager's and Owner's personnel in the operation and maintenance of any such equipment, materials, supplies or other items. Trade Contractor shall also maintain records relative to qualifications of its employees including, without limitation, licenses and certifications concerning the Work.

6.3 Supervisory Personnel

Trade Contractor shall engage a sufficient number of competent supervisory personnel as are necessary to perform the Work in accordance with the requirements of the Trade Contract. Trade Contractor shall further have a competent superintendent continuously on the Project site during work hours and readily available on call. The superintendent shall be fully acquainted with the Work and shall have the authority to administer the Trade Contract on Trade Contractor's behalf and shall not be changed except with the consent of Construction Manager, which consent shall not be unreasonably withheld.

6.4 Labor Harmony

Trade Contractor shall comply with any superintendence or project management obligations imposed upon Construction Manager under the Owner Contract to the extent necessary to ensure Construction Manager's compliance with such obligations to Owner. Trade Contractor shall be responsible for all labor relations matters relating to its performance of the Work and shall at all times maintain harmony among the personnel employed by it and its Trade Contractor-subcontractors in connection with the Project with those of Construction Manager, Construction Manager Construction Manager Owner and their other contractors. Trade Contractor shall at all times use all reasonable efforts and judgment as a skilled and experienced

contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes. Trade Contractor shall notify Construction Manager as promptly as possible of any actual or potential labor dispute that may affect the Work. If a labor condition threatens the timely completion of any portion of the Work and Trade Contractor fails to give satisfactory assurance of its ability to complete the Work in a timely manner, or Trade Contractor fails to employ labor that is compatible and in harmony with other labor employed on the Project, or Trade Contractor fails to continue to perform the Work without interruption or delay during a strike, picket, walkout, or other work stoppage or slowdown caused by a labor dispute, Construction Manager may, at its option, terminate Trade Contractor's right to proceed with Work for default or employ workmen to perform the affected Work and backcharge Trade Contractor the cost thereof.

6.5 Removal of Employee

If Construction Manager notifies Trade Contractor in writing that any employee or agent of Trade Contractor or one of its Trade Contractor-subcontractors is incompetent, disorderly, or otherwise unsatisfactory, such person shall immediately be removed, at Trade Contractor's cost, from the Work and shall not thereafter be employed in the performance of the Work.

7. TRADE CONTRACTOR'S EMPLOYEES/LABOR RELATIONS

7.1 Employee Records

The Trade Contractor will keep individual earning records for each of its employees for each day during which any employee is engaged in performing work covered by this Contract and will report, pay and otherwise discharge the duties and responsibilities imposed by law and regulation for, including but not limited to, unemployment, withholding, union contributions, Social Security and Medicare responsibilities. Without creating any duty to do so, it is agreed the Construction Manager may withhold during any calendar quarter so much of the contract price as the Construction Manager may deem reasonably necessary to pay said obligations and to keep the required records. The Construction Manager is further authorized by the Trade Contractor to make payment to such governmental entities, unions and other applicable third parties upon a reasonable showing that such monies are due and owing to them.

7.2 Collective Bargaining Agreements

The Trade Contractor shall adhere to and comply with any and all agreements with the Union having jurisdiction over its employees, if applicable, insofar as such agreements pertain to the deductions or contributions for welfare and other fringe benefits. Trade Contractor shall do whatever is necessary in the progress of its work to assure harmonious labor relations at the project and to prevent strikes or other labor disputes. Trade Contractor shall employ only such labor as, to Construction Manager's satisfaction, will work in harmony on the job and shall not use materials or employ means which may cause strikes or other labor disputes.

7.3 Indemnity for Labor Violations

Trade Contractor shall indemnify and defend Construction Manager against any liability, claim, loss, damage or expense resulting in any way directly or indirectly, from its failure to comply with the requirements of this article, including fees and costs incurred in enforcing this indemnity. Trade Contractor-Subcontractors shall comply with this section to the same extent and an express provision imposing such provisions on lower tier Subcontractors shall be included in their subcontracts.

8. EQUAL EMPLOYMENT OPPORTUNITY

8.1 Non-Discrimination

In connection with the performance of Work, Trade Contractor expressly warrants that it shall not discriminate or permit discrimination against any employee or applicant for employment on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, sexual orientation, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Trade Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of in which the Project is located; and the Trade Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, sexual orientation, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Trade Contractor that such disability prevents performance of the work involved.

8.2 CHRO Compliance

Trade Contractor agrees to comply with each provision of sections 4a-60, 4a-60a, 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e, 46a-68f and 46a-86 of the Connecticut General Statutes. To the extent the Owner Contract requires a Set-Aside Plan, Construction Manager shall withhold an additional 2% retainage until Trade Contractor's Set-Aside Plan is approved by CHRO.

8.2.1 Advertisements for Employment

Trade Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Trade Contractor, to state that it is an “affirmative action-equal opportunity employer” in accordance with regulations adopted by the Commission on Human Rights and Opportunities.

8.2.2 Collective Bargaining

Trade Contractor agrees to provide each labor union or representative of workers with which Trade Contractor has a collective bargaining agreement or other contract or understanding and each Trade Contractor-subcontractor with which Trade Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers’ representative of the contractor’s commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment.

8.2.3 Duty to Provide Information

Trade Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Trade Contractor as relate to the provisions of sections 4a-56, 46a-60 and 4a-60a of the Connecticut General Statutes.

8.2.4 Set-Aside Employment

Trade Contractor agrees and warrants that it will make good faith efforts to employ disadvantaged business, minority business, small business, and woman-owned business enterprises as Trade Contractor-subcontractors. Further and an addition to this general requirement, Trade Contractor agrees to comply with all Set-Aside requirements in the Owner Contract.

8.2.5 Duty to Cooperate in Investigation

Trade Contractor shall permit access to its books, records, and accounts by representatives of Construction Manager or Owner for purposes of investigation to ascertain compliance with the provisions of this Section.

8.2.6 Posting of Requirements

Trade Contractor agrees to post hereafter, in conspicuous places, available for employees and applicants for employment, notices, prepared by Trade Contractor, and approved by the government when required, setting forth the provision of this Section.

8.3 Failure to Comply

In the event of Trade Contractor’s non-compliance with the equal opportunity provisions of this Trade Contract, the Trade Contractor’s right to proceed may be terminated for default.

8.4 Trade Contractor-Subcontractor Compliance

Trade Contractor shall include the provisions of this Section in every Sub-subcontract and purchase order. The requirements of this Section shall be in addition to any equal opportunity provisions of the Trade Contract Documents.

9. ASSIGNMENT

9.1 Restrictions on Assignment

Trade Contractor acknowledges and agrees that none of its rights or obligations under the Trade Contract may be assigned or delegated without the prior written consent of the Construction Manager. Any assignment or delegation by Trade Contractor of a right or obligation hereunder without Construction Manager’s prior written consent shall be null and void and of no force or effect. Construction Manager shall have the right on written notice to Trade Contractor to assign this Trade Contract in whole or in part to Construction Manager’s designee, including without limitation, the Owner or its designee (including Owner’s lender) if Owner terminates Construction Manager’s performance under the Owner Contract for any reason or other circumstances exist under the Owner Contract requiring such assignment. Trade Contractor will cooperate with Construction Manager as required to effect any such assignment.

10. SUBMITTALS AND SUBSTITUTIONS

10.1 Reporting of Submittals

Within ten (10) days after the date of this Trade Contract, Trade Contractor shall submit to Construction Manager a complete list of all submittals required to be furnished by Trade Contractor under the Trade Contract and their respective anticipated submittal dates. Thereafter, Trade Contractor shall furnish Construction Manager on a monthly basis (or more frequently if requested by Construction Manager), a progress report on the status of the submittals, including any delay or anticipated delay in their issuance, revision or completion as the case may be.

10.2 Requirements for Submittals

Trade Contractor shall furnish all required shop drawings, cut sheets, samples, material lists, as-builts, data or other submittals for approval with the required number of copies prior to fabricating or ordering any equipment, material, supply or other item requiring an approved submittal. Submittal data shall be complete, submitted promptly and in such sequence as to ensure scheduled delivery of the applicable equipment, material, supply or other item and to cause no delay in the Work or in the activities of Construction Manager or its other contractors. All submittals, data, reports and other documents shall be in the English language.

10.3 Revisions to Submittals

Trade Contractor shall specifically advise Construction Manager in writing when transmitting a revised shop drawing or other submittal of any revisions that are in addition to, or differ from, those requested by the Construction Manager or the Architect on prior versions of the submittal. If Trade Contractor does not provide written notice of such additional or different revisions to Construction Manager, Construction Manager's and/or Architect's approval of the submittal shall not include such additional or different revisions. Notwithstanding the foregoing, Trade Contractor acknowledges that the Project Schedule does not allow for the resubmission of shop drawings and other submittals and that Trade Contractor is required to ensure its initial submittals meet the requirements of the Contract Documents. Trade Contractor shall be liable for any added costs or damage resulting from its failure to furnish submittals when and as required by the Trade Contract, including any re-performance and related costs of correction and any additional costs incurred by the Construction Manager, Owner or their other contractors.

10.4 Requirements for Substitutions

Trade Contractor shall not substitute any equipment, materials, supplies, specified by the Contract Documents, or any procedures or methods specified by the Contract Documents for performing the Work unless it first submits a written proposal to Construction Manager for substitution that complies with all applicable Trade Contract requirements and Construction Manager thereafter approves the substitution in writing. Trade Contractor acknowledges that unless expressly permitted by the Contract Documents, Trade Contractor shall not be entitled to substitute any such equipment, materials, supplies, or methods.

10.5 Review of Submittals

Review or approval of any Trade Contractor submittal by Construction Manager, Owner or Architect, or any of their consultants, shall not relieve Trade Contractor of any of its obligations under the Trade Contract. When professional certification of performance or design criteria of equipment, materials, systems or other items is required to be furnished by Trade Contractor under the Trade Contract, Construction Manager shall be entitled to rely upon such certification and shall not be expected or required to make any independent examination with respect thereto.

10.6 Coordination Drawings

If applicable to Trade Contractor's Work, Trade Contractor shall prepare coordination drawings showing exact alignment, physical location and other required details for those portions of its Work that must be coordinated with the work of Construction Manager, Owner or their other subcontractors and contractors, and shall participate in any related coordination efforts by Construction Manager. To the extent required by the Contract Documents or otherwise directed by Construction Manager, Trade Contractor shall cooperate and participate in the creation of a Building Information Model ("BIM") and any updates to such BIM.

10.7 As-Built Drawings

Trade Contractor shall maintain construction drawings and other data and documents at the Project site and update them each workday as required to accurately reflect the progress of the Work. Trade Contractor shall make such drawings, data and documents available for the Construction Manager's review at the Project site upon request, and at least on a monthly basis in connection with the Trade Contractor's estimates for payment. Trade Contractor shall furnish final as-built drawings to Construction Manager as part of its completion of the Work. Trade Contractor's compliance with this Section is a condition precedent to the Construction Manager's obligation to make interim progress payments and final payment to Trade Contractor.

10.8 Right to Use Documents

To the extent not inconsistent with the Owner Contract, all submittals and other documents furnished by Trade Contractor under the Trade Contract, including any designs, drawings, specifications, calculations, sketches, models, reports, computer programs, computer discs, diskettes or tapes, charts, photographs and other documents, are instruments of Trade Contractor's

service and all intellectual property rights in such documents shall belong to Trade Contractor; provided, however, Trade Contractor hereby grants to Construction Manager and Owner a transferable, irrevocable and perpetual royalty-free license to retain and use all such documents for any purpose in connection with the Project. Trade Contractor warrants and represents that any submittal or other document furnished by Trade Contractor or any of its Trade Contractor-subcontractors do not infringe any patent, copyright, trademark or other intellectual property rights of any person or entity.

11. PROTECTION OF PROPERTY

11.1 Duty to Protect the Work

Trade Contractor shall protect the Work at all times prior to its acceptance by Owner, and comply with all requirements of the Contract Documents concerning protection of the Work. Trade Contractor shall bear the risk of loss or any damage to the Work or a portion thereof prior to Owner's acceptance (regardless of the holder of title thereto), and Trade Contractor shall promptly replace, repair, restore or rebuild any such damaged Work so that it conforms to the requirements of the Trade Contract. If the damage is recognized by the insurer to be covered by a first party property insurance policy maintained by Owner or Construction Manager for the Project, Construction Manager will reimburse Trade Contractor its direct costs to replace, repair, restore or rebuild damaged Work to the extent of insurance proceeds Construction Manager actually receives for that work, less Construction Manager's cost to prepare and adjust the claim. Trade Contractor shall cooperate with Construction Manager and Owner in connection with the preparation and adjustment of any insurance claim for damage to the Work. Under no circumstances will Construction Manager or Owner be required to take any legal action to pursue coverage for damage to the Work in the event the insurer fails or refuses to recognize the existence or applicability of coverage for such damage. If requested by Trade Contractor, Construction Manager shall assign and shall request that the Owner assign to Trade Contractor its rights in connection with any such coverage issues, but only to the extent thereof.

11.2 Duty to Protect Property of Owner

Trade Contractor shall at all times protect the Project, Project site and the work and property of Owner, Construction Manager and their other subcontractors and contractors on the Project site from any damage arising out of its operations. Trade Contractor shall be responsible for any such damage and Construction Manager shall be entitled to backcharge Trade Contractor the amount of any deductible payable under any first party property insurance maintained by Construction Manager or Owner for the Project in connection with such damage. Trade Contractor shall at its expense promptly replace, repair, restore or rebuild any damage to the Project, Project site and the work and property of Owner, Construction Manager and their other contractors on the Project site arising out of its operations if so directed by Construction Manager. If the damage is recognized by the insurer to be covered by a first party property insurance policy maintained by Owner or Construction Manager for the Project, Construction Manager will reimburse Trade Contractor its direct costs to replace, repair, restore or rebuild to the extent of insurance proceeds Construction Manager actually receives for that work, less Construction Manager's cost to prepare and adjust the claim. Trade Contractor shall cooperate with Construction Manager and Owner in connection with the preparation and adjustment of any insurance claim for damage to the Work. Under no circumstances will Construction Manager or Owner be required to take any legal action to pursue coverage for damage to the Project, Project site and the work and property of Owner, Construction Manager and the other contractors on the Project site in the event the insurer fails or refuses to recognize the existence or applicability of coverage for such damage. If requested by Trade Contractor, Construction Manager shall assign and shall request that the Owner assign to Trade Contractor its rights in connection with any such coverage issues, but only to the extent thereof.

11.3 Duty to Protect Property of Third-Parties

In addition to the foregoing, Trade Contractor shall at all times take all necessary precautions to protect all third party property from any damage arising out of its operations, including the property of adjacent landowners, utilities, roads, bridges, waterways and railroads. If any such third party property is damaged as a result of Trade Contractor's operations, Trade Contractor shall promptly replace, repair, restore or rebuild it at its expense.

11.4 Duty to Replace Damaged Items

Unless otherwise expressly agreed, all equipment, material, supplies and other items furnished by Trade Contractor and incorporated into the Work shall be new, unused, of first-rate quality, suitable for use in the Work and in strict conformity with the requirements of the Trade Contract. Trade Contractor shall at all times cover and protect from damage and theft all equipment, materials, supplies and other items that are to be used in the performance of, or incorporated into, the Work at the Project. Trade Contractor is solely responsible for and shall bear the risk of loss for all equipment, materials, supplies and other items stored by it at the Project site (regardless of the holder of title thereto), and Trade Contractor shall replace any shortages thereof at its expense. If any damage or theft is recognized by the insurer to be covered by a first party property

insurance policy maintained by Owner or Construction Manager for the Project, Construction Manager will reimburse Trade Contractor its direct costs to replace damaged or stolen equipment, materials, supplies or other items to the extent of insurance proceeds Construction Manager actually receives for that replacement, less Construction Manager's cost to prepare and adjust the claim. Trade Contractor shall cooperate with Construction Manager and Owner in connection with the preparation and adjustment of any insurance claim for any damage or theft. Under no circumstances will Construction Manager or Owner be required to take any legal action to pursue coverage for any damaged or stolen equipment, materials, supplies or other items in the event the insurer fails or refuses to recognize the existence or applicability of coverage for the damage or loss in question. If requested by Trade Contractor, Construction Manager shall assign and shall request that the Owner assign to Trade Contractor its rights in connection with any such coverage issues, but only to the extent thereof.

12. MATERIALS AND EQUIPMENT TO BE INCORPORATED INTO PROJECT

12.1 Material and Equipment On-Site

Title to any materials and/or equipment to be incorporated into the Project stored by the Trade Contractor on site shall automatically vest in the Construction Manager notwithstanding the fact that all or a portion of said materials or equipment have not been paid for by the Construction Manager. This provision does not remove from the Construction Manager the obligation to pay for said materials pursuant to this Trade Contract, but does provide that title vests in the Construction Manager and that neither the Trade Contractor nor third parties may remove said materials without the express written permission of the Construction Manager. This provision does not alter the responsibility for safekeeping of said materials and/or equipment, nor constitute an "acceptance" of said materials or equipment by the Construction Manager as being in conformance with the Trade Contract. Protecting all work, material and equipment stored on or off site is the responsibility of the Trade Contractor.

12.2 Material and Equipment Stored Off-Site

Any materials or equipment to be incorporated in the Project, stored off site by the Trade Contractor whether or not paid for in whole or in part by the Construction Manager, shall be segregated and clearly identified as not being part of the inventory or assets of the Trade Contractor. An appropriate UCC filing will be executed upon request of the Construction Manager wherein the Construction Manager's title and security interest is recognized. Permission is given by the Trade Contractor to the Construction Manager to relocate any and all materials or equipment being incorporated into the Project, whether stored on or off site and/or whether paid for or not by the Construction Manager. The obligation to pay for said materials and/or equipment shall remain as set forth in the Trade Contract.

12.3 Title Vested Onto Construction Manager

Title to the Work, or portions thereof, shall pass to Construction Manager upon the occurrence of the earliest of the following events, as applicable: a) when such Work or portion is delivered to the Construction Manager or the Project Site pursuant to the Trade Contract; b) when Trade Contractor has been paid any sum to which it may become entitled in respect to such Work or portion; c) when such Work or portion is identifiable to the Trade Contract; or d) when the Certificate of Final Completion for all Work is issued by Construction Manager on behalf of the Owner and/or Architect. All equipment, materials, supplies and other items to which Construction Manager has title shall not be removed from the Project site without Construction Manager's prior written consent

13. CLEAN UP

13.1 Duty to Keep Site Clean

Proper housekeeping is an essential component of creating and maintaining an injury free environment. Trade Contractor shall observe proper housekeeping controls for construction debris, waste materials and rubbish arising from its operations and shall cleanup and remove, on a daily basis (or shorter interval if required for safety or if directed by Construction Manager), all such items from the Project site, unless, by specific written agreement with the Construction Manager, the Trade Contractor is given permission to use the Construction Manager's waste disposal dumpster or the like. Notwithstanding such written agreement, the Trade Contractor warrants and represents that no hazardous substances shall be placed in the Construction Manager's waste stream and, in the event a hazardous substance or substances are placed in the Construction Manager's waste stream by the Trade Contractor, the Trade Contractor shall indemnify, defend and save harmless the Construction Manager from any and all suits (including cost of defense) damages, injuries and losses without limitation, arising out of or connected with said Trade Contractor's depositing, knowingly or unknowingly, hazardous substances in Construction Manager's waste stream. If Construction Manager permits Trade Contractor temporarily to store debris, waste materials or rubbish at a designated location on or near the Project site, Trade Contractor shall ensure that the

items are at all times stored safely and shall remove them from the designated location immediately following Construction Manager's direction that it do so. Fire exits, corridors, ladder ways, doorways and exit paths in general shall be clear and open to pedestrian and handicapped access traffic at all times, specifically including nights and weekends. As part of the completion of its Work and as a condition precedent to final payment, Trade Contractor shall perform a final cleaning to remove all stains, splatter and dirt from its Work and to remove any remaining construction debris, waste materials and rubbish arising from its operations from the Project site. If Trade Contractor fails to observe proper housekeeping within twenty-four (24) hours of Construction Manager's written notice (or shorter time if necessary) to properly correct a deficiency which compromises the maintenance of an injury free environment, Construction Manager may properly clean up and remove any such construction debris, waste materials or rubbish by the most expeditious means available and charge Trade Contractor for the costs incurred. Notwithstanding anything to the contrary set forth herein, Trade Contractor shall comply with the requirements set forth in the contract documents, including, without limitation, specification 01 74 13 Project Cleanliness, attached hereto.

13.2 Construction Manager's Right to Clean Up

Construction Manager reserves the right, upon twenty-four (24) hours written notice to all responsible subcontractors, to clean-up one or more areas of the Project site and remove unidentifiable construction debris, waste materials and rubbish from the area. Construction Manager shall backcharge the costs incurred for this work on a pro-rata basis to each subcontractor working in the affected area.

14. SAFETY COMPLIANCE

14.1 Duty to Cooperate

Trade Contractor acknowledges that the safety of persons and property on and off the Project site in connection with performance of the Work is of prime importance to Construction Manager and Owner, and Trade Contractor shall cooperate with Construction Manager and Owner in efforts to prevent injuries to persons and property and to comply with all applicable safety rules and regulations to create and maintain an injury free environment.

14.2 Trade Contractor Responsible for Safety of Work

Trade Contractor agrees that the prevention of accidents to workers engaged in the Work under the Trade Contract is solely its responsibility. Trade Contractor specifically agrees to take appropriate precautions to assure the safety of all persons, including, but not limited to, its own employees, materialmen and Trade Contractor-subcontractors, whose safety might otherwise be jeopardized by any and all peculiar, unreasonable risks of physical harm or by any other risk of harm relating to or arising out of the work. Trade Contractor shall comply with all applicable safety laws and regulations and with any and all safety standards established during the progress of the work by the Construction Manager. Trade Contractor shall establish and implement a safety program for its work. Trade Contractor shall submit its safety program for review by Construction Manager. Any review of this Trade Contractor's safety program by Construction Manager shall not be deemed to release Trade Contractor or in any way diminish its Trade Contractor's liability by way of indemnity or otherwise, as assumed by it under this subcontract.

14.3 Trade Contractor's Safety Program

Trade Contractor shall be responsible for safety precautions and training programs and shall take all actions necessary to provide for the safety of persons and property on or off the project site in connection with the performance of the Work. The Construction Manager makes no representation with respect to the physical conditions or safety of the Project Site. The Trade Contractor shall, at its own expense, preserve and protect from injury its employees engaged in the performance of the Work and all property and persons which may be affected by its operations in performing the Work. The prevention of accidents to workers engaged in the Work and others affected by the Work is the sole responsibility of the Trade Contractor. Trade Contractor shall comply with all Trade Contract requirements relating to safety, including as set forth in **Exhibit B** and the Owner Contract, and all requirements under Applicable Law relating to safety, including the Williams-Steiger Occupational Safety and Health Act of 1970, and any amendments thereto. Trade Contractor shall immediately submit copies of all accidents or injury reports to Construction Manager, and monthly tabulations of injuries and man hours expended in a format acceptable to Construction Manager

14.4. Compliance with Environmental Requirements

Trade Contractor shall comply with all environmental requirements set forth in the Trade Contract and Applicable Law relating to the protection or preservation of the environment from hazardous material or waste, toxic substance, pollution or contamination or the discharge or release of, or exposure to, materials (including energy, odors, noise, soil, dust, etc.) into the environment. Trade Contractor shall not under any circumstance apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to air, water or noise pollution or similar environmental

laws or regulations relating to the Trade Contract or the performance thereof; without Construction Manager's prior written approval.

14.5 Duty to Correct Safety Violations

When so ordered, Trade Contractor shall stop any part of the work which Construction Manager deems unsafe until corrective measures satisfactory to Construction Manager have been taken. Should Trade Contractor neglect to adopt such corrective measures, Construction Manager may do so and deduct the cost from payments due to Trade Contractor. Construction Manager's failure to take corrective measures on behalf of the Trade Contractor shall in no way be deemed to release Trade Contractor, or in any way diminish Trade Contractor's liability by way of indemnity or otherwise as assumed by Trade Contractor under this Contract. Trade Contractor shall indemnify, defend and hold harmless Construction Manager, Owner and their respective officers, directors, agents and employees from any costs, expenses or liability (including attorneys' fees, fines or penalties) resulting from failure of Trade Contractor to comply with the aforesaid obligations, laws, regulations and codes.

15. BONDS AND PERFORMANCE INSURANCE

15.1 Payment and Performance Bonds

If bonds are required by the Trade Contract, Trade Contractor shall furnish separate performance and payment bonds to secure its obligations under the Trade Contract, each with a penal amount equal to one hundred percent (100%) of the Trade Contract Price. The bonds shall be written on the forms attached as **Exhibit G**. Trade Contractor shall pay the premium for the bonds and the cost thereof is included in the Trade Contract Price. Unless more stringent requirements are imposed by the Owner Contract, all bonds issued by Trade Contractor shall be issued by a surety acceptable to Construction Manager that is listed in the most current Federal Register listing of approved surety companies (Federal Register, Vol. 55, Department of Treasury Circular 570) with an AM. Best Rating of "A-" or better, and is authorized to issue the bonds in the state where the Project is located.

15.2 Performance Insurance

In lieu of requiring Trade Contractor to provide payment and performance bonds, Construction Manager, at its sole option, may secure Trade Contractor's obligations under the Trade Contract by obtaining subcontract performance insurance, to insure Construction Manager against a Trade Contractor default. Such insurance shall be for the exclusive benefit of Construction Manager and the existence of such insurance coverage shall not in any way limit or restrict any of Construction Manager's rights or remedies in the event of a Trade Contractor default, nor shall it in any manner inure to the benefit of, or provide any rights or remedies to, Trade Contractor or any of its Trade Contractor-subcontractors or any of their respective employees or agents. If Construction Manager elects to secure Trade Contractor's obligations under the Trade Contract through such insurance, Trade Contractor shall comply with Construction Manager's qualification procedures for such insurance, including providing documentation and information required by the subcontract performance insurer involving financial, technical, management and other matters relating to Trade Contractor and its operations. If Trade Contractor fails to qualify for such subcontract performance insurance coverage, Construction Manager may elect to require Trade Contractor to furnish performance and payment bonds to secure Trade Contractor's obligations under the Trade Contract, and Trade Contractor shall provide those bonds in the manner and time specified by Construction Manager and otherwise in accordance with this Section.

15.3 Obligation to Issue Bonds or Enroll in Performance Insurance Before Commencing Work

If bonds or subcontract performance insurance coverage are required for Trade Contractor, Trade Contractor shall not commence performance of the Work before it has furnished the required performance and payment bonds or qualified for and been enrolled in the subcontract performance insurance program, as applicable. If Trade Contractor commences performance of the Work in violation of this Section, Trade Contractor shall be deemed to have done so at its own risk and shall not be entitled to payment until the bonds are furnished to Construction Manager or Trade Contractor is qualified for and enrolled in the subcontract performance insurance program, it being understood and agreed that Trade Contractor's compliance with the applicable bond or subcontract performance insurance requirements is a condition precedent to Construction Manager's obligation to pay Trade Contractor for Work performed.

16. INSURANCE

Trade Contractor shall strictly comply with all of Construction Manager's standard insurance requirements set forth in **Exhibit F** to the Trade Contract.

17. GUARANTEE

17.1 Warranty and Guarantees

Trade Contractor warrants and guarantees that all Work (i) shall be free of defects in design, workmanship and material, (ii) shall be performed in accordance with the generally accepted industry codes and standards applicable to the Work, (iii) shall be performed in a good and workmanlike manner; and (iv) shall strictly conform to the requirements of the Trade Contract

(including any warranties required of the Construction Manager under the Owner Contract to the extent applicable to the Work). Upon receipt of written notice of a defect or deficiency in the Work, Trade Contractor shall at Construction Manager's sole option and at no cost to Construction Manager, promptly repair, replace, or re-perform such defective or deficient Work so that it conforms to the requirements of the Trade Contract. Trade Contractor's obligation to repair, replace, or re-perform defective or deficient Work under this Section shall extend: (i) for the warranty or guarantee period(s) specifically established in the Trade Contract; or, (ii) if no such warranty or guarantee period(s) has been established, for the warranty period established for Construction Manager's work under the Owner Contract.

17.2 Right to Take Credit to Trade Contract Price

If Construction Manager deems it inexpedient for Trade Contractor to repair, replace, or re-perform defective or deficient Work, Construction Manager may make a deduction from the Trade Contract Price in lieu of such repair, replacement and re-performance, as determined by Construction Manager. Trade Contractor shall provide information and execute documents as requested or required by Construction Manager to assign any Trade Contractor warranty or guarantee to Owner or another party.

17.3 Duty to Require Trade Contractor-subcontractors to Provide Similar Guarantees

Trade Contractor shall require guarantees from its Trade Contractor-subcontractors similar to those provided by Trade Contractor under this Section. Trade Contractor's Sub-subcontractor's warranties and guarantees shall be expressly stated to be for the benefit of and be enforceable by Construction Manager and Owner and assignable to Construction Manager and Owner upon demand by Construction Manager.

17.4 Right to Backcharge Trade Contractor

If Construction Manager notifies Trade Contractor at any time during the performance of the Work to correct defective or deficient Work, and Trade Contractor states, or by its actions, indicates that it is unable or unwilling to proceed with corrective action in a reasonable time, Construction Manager may upon notice to Trade Contractor accomplish the required corrective action by the most expeditious means available and back charge Trade Contractor for the costs incurred.

17.5 Non-Waiver of Obligations

Nothing contained herein, and no warranty or guarantee period(s) specifically established in the Trade Contract shall be construed to establish a period of limitation on any of Trade Contractor's obligations or liability under the Trade Contract, other than Trade Contractor's obligation to repair, replace, or re-perform defective or deficient Work during the period in question as provided in this Section.

18. LIENS

18.1 Lien Free Title to Work

To the fullest extent permitted by law, Trade Contractor warrants and guarantees free and clear title to the Work and all equipment, materials, supplies and others items supplied by Trade Contractor for incorporation into the Work shall pass to Construction Manager and Owner, and that the Work, the Project site and the Project and any and all interests and estates therein and any and all improvements and materials placed on the Project site by Trade Contractor or its Trade Contractor-subcontractors shall be free and clear of, all liens, claims, security interests and other encumbrances made by, through or under Trade Contractor or any of its Trade Contractor-subcontractors.

18.2 Duty to Defend and Discharge Encumbrance

In the event of any nonconformity with the requirements of this Section, Trade Contractor shall promptly: (i) defend Construction Manager's and Owner's title to the Work, the Project site and Project and such interests, estates, improvements and materials, as the case may be; and (ii) remove and discharge any such lien, claim, security interest or other encumbrance by paying the claimant, by posting a bond or other instrument as required by Applicable Law, or by providing Construction Manager collateral that is satisfactory in form and substance to Construction Manager and Owner to fully indemnify, defend and hold harmless Construction Manager and Owner from and against any damages resulting from such encumbrance.

18.3 Construction Manager's Right to Withhold Payment

Construction Manager may withhold from any amount due or to become due to Trade Contractor an amount sufficient to remove and discharge such encumbrance until Trade Contractor has removed and discharged such encumbrance as required by this Section. If Trade Contractor has not removed and discharged a lien, claim, security interest or other encumbrance covered by this Section within ten (10) days after it has been made or filed, Construction Manager may cause the encumbrance to be removed and discharged with the moneys withheld. In such instances, all costs incurred by the Construction Manager in substituting a bond for the lien, including reasonable attorneys' fees, and any costs or expenses of the Owner will be borne by the Trade Contractor. Nothing contained herein shall prevent the Trade Contractor, after furnishing a bond, from resorting to court process in an effort to have the bond reduced in amount and/or the lien dissolved.

18.4 Duty to Identify Potential Lienors

Trade Contractor shall, as often as requested by Construction Manager, furnish a statement identifying each party that has furnished or is furnishing any services, labor, equipment, materials supplies or other items to Trade Contractor in connection with the Project, along with other pertinent information including such party's principal contact, address, phone number, the value of and the party's contract, the amount paid to date and the amount due or to become due thereunder. Construction Manager may also request Trade Contractor from time to time to obtain similar information from one or more of its Trade Contractor-subcontractors and Trade Contractor shall do so and provide it to Construction Manager within five (5) days of Construction Manager's written request. Construction Manager may alternatively request such information directly from one or more Trade Contractor-subcontractor and Trade Contractor expressly consents to Construction Manager contacting its Trade Contractor-subcontractors for this purpose. Trade Contractor shall furnish Construction Manager within five (5) days of Construction Manager's written request evidence that Trade Contractor has paid all amounts incurred by the Trade Contractor for services, labor, equipment, materials supplies and other items used or furnished by Trade Contractor in connection with the Project, or other liability incurred by Trade Contractor for the purpose of performing the Work.

19. INDEMNITY

19.1 Duty to Indemnify

In addition to any other defense, indemnity or hold harmless obligation imposed on Trade Contractor by the Trade Contract or Applicable Law, Trade Contractor shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the Owner, Construction Manager, and their respective directors, officers, employees, parents and subsidiaries of any tier, representatives, agents, successors and assigns, and any and all representatives, agents, directors, officers, employees of any of the foregoing ("Indemnified Parties") from and against any and all losses, costs, expenses, damages, injuries, claims, demands, obligations, liabilities, judgments, fines, penalties, interest and causes of action, including without limitation administrative and legal costs and reasonable attorney's fees involving the following:

- (1) Injury or death to any person, or damage to or destruction of any property (including loss of use thereof), or any other damage or loss by whomsoever suffered resulting from or arising out of or in connection with the Work;
- (2) Any failure of the Trade Contractor or the Work to comply with the requirements of the Trade Contract;
- (3) Any claim, demand or lawsuit filed or made by anyone providing labor, materials or services to the Trade Contractor;
- (4) Any actual or alleged violation of Applicable Law by Trade Contractor or its Trade Contractor-subcontractors concerning the Work;
- (5) Any unwarranted lien, claim, security interest or other encumbrance made or filed against: (i) the Work, Project site and the Project; any and all interests and estates therein and any and all improvements and materials placed on the Project site by Trade Contractor or its Trade Contractor-subcontractors; or, (ii) any payment, performance, lien prevention, or lien discharge bond posted by any of the Indemnified Parties;
- (6) Any hazardous material or waste, toxic substance, pollution or contamination brought to or generated on the Project site by Trade Contractor or its Trade Contractor-subcontractor, or used, handled, transported, stored, removed, remediated, disturbed or disposed of by Trade Contractor or its Trade Contractor-subcontractor; and
- (7) Any actual or alleged infringements of any patent, trademark, copyright or other intellectual property or proprietary right by Trade Contractor, its Trade Contractor-subcontractor or the Work furnished by Trade Contractor ("IP Infringement");

The foregoing obligations of Trade Contractor shall not be affected or limited in any way by any insurance required of or provided to Trade Contractor under the Trade Contract. If a temporary restraining order or preliminary injunction is granted in any proceeding involving a claim, demand or cause of action for an IP Infringement, Trade Contractor shall make every reasonable effort at its expense to secure the suspension of the restraining order or injunction by giving a satisfactory bond or otherwise. If any portion of the Work is held in such proceeding to constitute an infringement and the use thereof is permanently enjoined, Trade Contractor shall at its expense promptly secure a license authorizing Construction Manager's and Owner's continued use of such Work or, if Trade Contractor is unable to secure such license, replace the affected Work or modify it so that it is non-infringing. Trade Contractor shall not be required to defend, indemnify and hold harmless any Indemnified Party for damages resulting, or to result from that Indemnified Party's sole negligence or intentional misconduct.

19.2 Limitation of Liability

In no event shall any of the Indemnified Parties be liable to Trade Contractor or any of its Trade Contractor-subcontractors, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated or otherwise, and Trade Contractor hereby releases each of the Indemnified Parties from any such liability. Trade Contractor shall obtain similar releases from each of its Trade Contractor-subcontractors

20. DELAYS TO THE WORK

20.1 Liability for Trade Contractor Delays

Trade Contractor shall be liable to Construction Manager for any and all loss or damage Construction Manager sustains as a result of Trade Contractor's delay in the safe performance of the Work or delay to the Project attributable to Trade Contractor including, without limitation, any amounts due from Construction Manager to Owner under the Owner Contract such as liquidated damages. Trade Contractor acknowledges that any liquidated damages payable by it are reasonable and appropriate in light of the probable increased costs and other anticipated damage to Construction Manager in the event of the performance failure by Trade Contractor in connection with which such damages become payable. Trade Contractor agrees to and does hereby waive any defense as to the validity or enforceability of any liquidated damages payable by it under the Trade Contract on the grounds that such damages are void as penalties or are not reasonably related to actual damages, whether the damages were specifically established by Construction Manager and Trade Contractor under the Trade Contract or were established by Construction Manager and Owner under the Owner Contract. Trade Contractor further agrees that Construction Manager shall be entitled to recover from Trade Contractor any damages Construction Manager incurs as a result of Trade Contractor's failure to discharge a Trade Contract obligation that exceeds any liquidated damages paid by Trade Contractor in connection with that failure.

20.2 Trade Contractor's Remedy for Delays

In no event shall the Trade Contractor be entitled to any compensation or recovery of any damage in connection with any delay and/or disruption, including without limitation, consequential damages, lost opportunity cost, impact damages, acceleration damages, wage and material escalation damages, loss of efficiency, loss of productivity, out of sequence work and other delay or disruption damages. The full and complete compensation to, and sole and exclusive remedy of, Trade Contractor in the event of any delay, interference or other adverse impact to the Work shall be an extension of time for performance of the Work. Trade Contractor acknowledges that in agreeing to the Trade Contract Price it has assessed the potential impact of the limitations in this Section on its ability to recover additional compensation in connection with a Work delay or interference and agrees that these limitations will apply regardless of the accuracy of Trade Contractor's assessment or actual costs incurred by Trade Contractor. The delays, interferences or other adverse impacts to the Work contemplated in this section shall include, without limitation, any delay or disruption involving:

- (1) the commencement of all or part of the work,
- (2) hindrance or obstruction in the performance of the work,
- (3) failure of one or more Trade Contractor or Trade Contractor-subcontractors to perform,
- (4) "come-backs" or "go-backs" as a result of incomplete or defective work of other subcontractors or their sub-subcontractors,
- (5) the Owner, the Owner's representative, the Construction Manager or other subcontractors, whether or not such delays and/or disruptions are foreseeable, contemplated, or unanticipated, unless said delay is caused by acts of the Owner constituting active interference with the Trade Contractor's performance of the Work, and only to the extent such acts continue after the Trade Contractor furnishes the Owner with written notice of such interference,
- (6) change orders;
- (7) bankruptcy or insolvency of one or more Trade Contractors or Trade Contractor-subcontractors;
- (8) changes necessitated by changes in laws or regulations;
- (9) unavailability or shortage of building materials;
- (10) job site theft;
- (11) weather conditions; and
- (12) vandalism or natural disaster requiring reconstruction.

20.3 Notice of Delays

Trade Contractor, within two (2) days of the time set forth in the Owner Contract for the Construction Manager to provide notice to the Owner, but in no event more than five (5) days after the observance of any delay, impact or disruption or acceleration caused by Owner, Construction Manager, other subcontractors, or Construction Manager's suppliers, shall notify Construction Manager, in writing, stating full details of the cause of the alleged delay, impact, disruption(s) or acceleration for which Owner is responsible, in sufficient time, so its claims may be timely processed against Owner. Trade Contractor's failure to assert a claim in the manner, and within the time provided for in this Section, constitutes a complete waiver of the claim.

20.4 Non-Waiver of Rights

Permitting the Trade Contractor to continue to perform its Work after the agreed time for performance has expired shall not be construed as or constitute a waiver by Construction Manager of any claims for loss or damage it may have against Trade Contractor as a result of such delay.

21. CHANGES AND IMPACTS

21.1 Changes to the Work

Construction Manager may, by written order (and without notice to Trade Contractor's sureties), make changes to the work to be performed by Trade Contractor within the scope of the Owner Contract or as required by the Owner. The changes made may increase, decrease or alter Trade Contractor's work. The Trade Contractor shall make no claim for extra or additional work unless the same shall be done in pursuance of a written change order executed by an executive officer of the Construction Manager. Unless directed by Construction Manager in writing to proceed immediately with a change, Trade Contractor shall submit a written request to Construction Manager for a Trade Contract adjustment as provided herein prior to proceeding with the extra or additional work.

21.2 Changes Not Involving the Owner

For any Construction Manager initiated change, Trade Contractor shall submit its written request for a change order within ten (10) days of receipt of Construction Manager's change notice, but in no event later than two (2) days prior to the expiration of the time period specified in the Owner's Contract for the submission of such a request. Trade Contractor's request shall include documentation sufficient to enable the Construction Manager to determine the factors necessitating the adjustment(s) being requested. If Construction Manager decides to proceed (or Trade Contractor has already proceeded with the written direction of Construction Manager) with the change and a Trade Contract adjustment is warranted, Construction Manager shall issue a written change order to Trade Contractor adjusting the Trade Contract either: (i) as requested by Trade Contractor; or, (ii) in the event the Construction Manager disagrees with Trade Contractor's statement as to the effect of the change, Construction Manager shall issue a change order to Trade Contractor on terms Construction Manager reasonably deems appropriate. Trade Contractor shall thereafter perform the Work in accordance with the change order, subject to dispute resolution under the Trade Contract. Trade Contractor shall have no right to suspend or delay the performance of its obligations under the Trade Contract while the Construction Manager is reviewing Trade Contractor's adjustment request or if Trade Contractor disagrees with the change order issued by Construction Manager.

21.3 Changes Involving Owner

For any change initiated by, or otherwise involving the Owner or Architect, Trade Contractor shall submit its written request for a change order no later two (2) days prior to the expiration of the time period specified in the Owner's Contract for the submission of such a request and shall include all information required under the Owner Contract. Construction Manager shall process Trade Contractor's change order request in accordance with the change order process in the Owner Contract. Trade Contractor's entitlement to additional compensation or a time extension in connection with a change initiated by the Owner or Architect shall be limited to the cost and schedule adjustments approved by Owner for Trade Contractor's Work in Owner's change order to Construction Manager under the Owner Contract.

21.4 Pricing of Change Orders

Unless the Owner Contract requires different pricing, the amount of additional compensation paid to Trade Contractor shall be determined by one of the following methods at the sole discretion of the Construction Manager:

- (1) Lump sum price in an amount proposed by Trade Contractor (properly itemized and supported by sufficient substantiating data to permit evaluation) and accepted by Construction Manager;
- (2) Unit Prices or Alternates as set forth in **this Trade Contract** (if applicable); or
- (3) Time and material basis.

21.4.1 Allowable Markups

Without regard to the method utilized by Construction Manager to price any change, in no event shall Trade Contractor's overhead and profit mark-up percentages on additional costs incurred in connection with changes and impacts to the Work for which Trade Contractor is entitled to a Trade Contract adjustment exceed the mark-ups allowed to Construction Manager for changes under the Owner Contract. Trade Contractor shall not apply a mark-up to any costs the Owner Contract provides are not subject to mark-up. Trade Contractor's overhead and profit markup for Work that does not involve Owner shall be limited to ten percent (10%).

21.5 Documentation of Costs

If a change is performed by Trade Contractor on other than a lump sum basis, Trade Contractor shall furnish each day to Construction Manager certified copies of all time sheets, receiving and inspection reports and shall provide Construction Manager with such purchase orders, invoices, Trade Contractor-subcontractor quotes and other documents and records as may enable Construction Manager to verify, to its reasonable satisfaction, the costs or savings reasonably incurred by Trade

Contractor in effecting the change. All labor, services, equipment, materials, supplies and other items provided by Trade Contractor on other than a lump sum basis shall be purchased at competitive market prices and reflect Trade Contractor's actual cost after rebates and discounts. Trade Contractor acknowledges and agrees that any request for an adjustment will be totally inclusive of all additional costs and time extensions related to the change, whether resulting from delays, inefficiencies, interferences or any other impact to Trade Contractor's performance of the Work. Trade Contractor's failure to request a cost or time adjustment in connection with a change shall constitute a representation by Trade Contractor that no such adjustment is required and shall constitute a waiver by Trade Contractor of its right to any such adjustment. Trade Contractor's failure to timely submit a proposed credit for deleted Work shall render Construction Manager's and/or Owner's or Architect's determination of the proper credit final and binding.

21.6 Right of Construction Manager to Review Costs

Trade Contractor shall allow Construction Manager to review any data Construction Manager may reasonably request to assist the Construction Manager, Owner and/or Architect to determine the validity of a Trade Contract adjustment requested by Trade Contractor. Data that may be reviewed includes, but is not limited to: (i) Trade Contractor's payroll records for each employee working on the Project (which shall contain the employee's name, address, social security number, hourly wage, daily and weekly number of hours worked, gross wages earned, deductions made and actual wages paid); (ii) Trade Contractor's Project estimate(s) and supporting calculations; (iii) Trade Contractor's cost reports and supporting documentation, (iv) Trade Contractor work schedules and related documents; and (v) Trade Contractor-subcontractor related documents (which Construction Manager may obtain from Trade Contractor or directly from the Trade Contractor-subcontractor).

21.7 Construction Change Directives

If Construction Manager and Trade Contractor do not agree as to the appropriate adjustment to the Trade Contract Price and/or Trade Contractor's time for performance in connection with a change, Construction Manager may issue a "directive" that directs Trade Contractor to proceed with the change and leaves the adjustment to the Trade Contractor Amount and/or Trade Contractor's time for performance open. Trade Contractor shall proceed with the change and provide Construction Manager the information and documents required herein in connection with changes performed on other than a lump sum basis to support its additional costs and information and documents to support its request for a time extension. When the change has been completed, Construction Manager shall determine the appropriate adjustment, or for claims resulting from the Owner or Architect, shall refer the matter to the Architect or Owner's representative to determine the appropriate adjustment to the Trade Contract Price and/or Trade Contractor's time for performance. Their decision shall be binding on Trade Contractor.

21.8 Duty to Provide Timely Notice

Trade Contractor shall make all claims for additional compensation, and extensions of time due to acceleration, disruption or inefficiency or other adverse impacts to the Work or otherwise to Trade Contractor's performance under the Trade Contract within two (2) business days following the occurrence of the event giving rise to the claim and in such manner so as to permit the Construction Manager to satisfy the requirements of the Owner Contract for the submission of such claim. All such claims shall be supported by appropriate documentation and, in the case of requests for extensions of time, sufficient detail to demonstrate that the impact is to work activities on the critical path. If the Trade Contractor fails to submit a claim to the Construction Manager as required, then Trade Contractor's right to a Trade Contract adjustment relating to such claim shall be waived. Trade Contractor's timely compliance with the notice requirements herein shall be a condition precedent to Trade Contractor's entitlement to a Trade Contract adjustment and Trade Contractor waives and releases any claim for additional compensation or an extension of time in the event that Trade Contractor does not so comply.

21.9 Authority of Construction Manager's Employees

Notwithstanding anything to the contrary herein, Trade Contractor agrees and acknowledges that the functions and powers of the employees of the Construction Manager are strictly limited to the execution of this work hereunder, as defined by this Contract, and that they have no authority to make, permit or authorize any alteration, change or departure in or from the terms and provisions of this Contract or the plans and specifications, or to waive any right of the Construction Manager. The job superintendent and/or project manager shall have authority to make decisions pertaining to the execution of the work hereunder as the work progresses. Construction Manager's execution of time and material tickets or similar field documentation shall be for the sole purpose of validating the quantities of material and labor and shall not constitute evidence or an admission that Trade Contractor is or is not entitled to a change order for the work covered by such documents.

21.10 No Presumption of Validity

Nothing done or not done by Construction Manager or Owner shall be construed as an acknowledgment or acceptance of the accuracy or validity of any Trade Contract adjustment requested by Trade Contractor until a signed change order is issued to Trade Contractor by Construction Manager.

21.11 Invalid Claims

In the event the Trade Contractor asserts any frivolous claim against Construction Manager (or submits a Trade Contractor adjustment request that has no substantial merit or that is based in whole or in part upon materially inaccurate assertions), Construction Manager shall be entitled to collect from Trade Contractor by offset or otherwise any and all costs and expenses (including but not limited to reasonable attorney's fees) incurred by Construction Manager in investigating, responding to, defending against and resolving such claim or request.

22. TRADE CONTRACTOR DEFAULT

22.1 Events of Default

If, in the reasonable opinion of Construction Manager, Construction Manager Construction Manager Trade Contractor at any time (1) refuses or fails to provide a sufficient number of properly skilled workmen or materials of the proper quality, or to make sufficient progress, in each case so as to endanger the timely or proper performance of the Work (2) fail in any respect to prosecute the Work according to the Project Schedule, (3) stop, delay, or interfere with the work of Construction Manager or any other builder or subcontractor, (4) fail to comply with all provisions of this Trade Contract Agreement or the Contract Documents as incorporated herein, (5) be adjudged bankrupt, or make a general assignment for the benefit of its creditors, (6) have a receiver appointed, (7) become insolvent or a debtor in reorganization proceedings, or (8) otherwise breaches any provision of the Trade Contract, then, after serving written notice and Trade Contractor's failure to fully and completely cure the default and provide reasonable evidence of such cure to Construction Manager within forty-eight (48) hours of receipt of Construction Manager's written notice, Construction Manager may, at its option and without voiding the other provisions of the Trade Contract, (i) take such steps as are necessary to overcome the condition, (ii) terminate Trade Contractor's right to proceed with all or part of the remaining Work, take possession of the terminated Work and any and all of Trade Contractor's materials, tools, appliances, equipment and other items at the Project site and finish the terminated Work by whatever method Construction Manager may deem expedient; or (iii) seek specific performance of Trade Contractor's obligations hereunder, it being agreed by Trade Contractor that specific Performance may be necessary to avoid irreparable harm to Construction Manager and/or Owner. In the event of an emergency affecting the safety of persons or property, the Construction Manager may proceed as above without notice.

22.2 Remedy for Default

In the event of termination for default, Construction Manager may, at its option, (1) enter the premises and take possession, for the purpose of completing the Work, of all materials of Trade Contractor, (2) require Trade Contractor to assign to Construction Manager any or all of its subcontracts or purchase orders involving the Project, and/or (3) complete the Work either by itself or through others, by whatever method Construction Manager may deem expedient.

22.3 Termination for Default

In case of termination for default, Trade Contractor shall not be entitled to receive any further payment until the Work shall be fully completed and accepted by Owner. At such time, if the unpaid balance of Trade Contract Price to be paid shall exceed the expense incurred by Construction Manager plus an overhead fee of fifteen percent (15%) of the costs of finishing the Work payable to Construction Manager, such excess shall be paid by Construction Manager to Trade Contractor, provided Trade Contractor's Work has been finally completed and accepted by Owner, and Construction Manager actually receives payment from Owner for such Work. If such amount due to Construction Manager shall exceed such unpaid balance, then Trade Contractor shall pay Construction Manager the difference within five (5) business days following demand by Construction Manager. Trade Contractor shall pay all reasonable costs of collection, if any, including Construction Manager's attorney's fees. If it is determined Construction Manager wrongfully terminated Trade Contractor under this section, then the termination shall be deemed to be a termination for convenience, and the provisions for such termination shall apply.

22.4 Other Remedies for Default

In the event the Construction Manager does not terminate for default, Construction Manager may take such steps as are necessary to overcome the condition including, without limitation, performing such work with its own forces or with a separate subcontractor. In which case, Construction Manager may deduct from amounts that are due or may become due to the Trade Contractor all costs incurred by Construction Manager including, without limitation, a fifteen percent (15%)

markup. If such amount due to Construction Manager shall exceed such unpaid balance, then Trade Contractor shall pay Construction Manager the difference within five (5) business days following demand by Construction Manager. Trade Contractor shall pay all reasonable costs of collection, if any, including Construction Manager's attorney's fees.

22.5 Remedy Under Trade Contractor's Performance Bond or Other Guarantee

In the event Trade Contractor's performance under the Trade Contract is secured by a surety performance bond or other guarantee of performance, Construction Manager may, in the event of a Trade Contractor default, demand that Trade Contractor's surety or guarantor complete performance of the Work. In the event the surety or guarantor fails to perform and complete Trade Contractor's Work and other obligations in accordance with the Trade Contract and bond or guarantee (as applicable), Construction Manager may proceed to remedy Trade Contractor's default in accordance with this Section. To the extent Construction Manager's damages exceed the Trade Contract balance at time the Trade Contract is terminated, Construction Manager shall be entitled to pursue its remedies against Trade Contractor's surety or guarantor for breach of its bond or guarantee obligations.

22.6 Provisions in Trade Contract Survive Termination

The rights and remedies of the Construction Manager and obligations of the Trade Contractor relating to the dispute resolution provisions, the bonding and surety provisions, the lien provisions, the guarantee provisions and the indemnity provisions, and any other provision of the Trade Contract that either: (1) provides for limitation of or protection against liabilities between Construction Manager and Trade Contractor; or (2) expressly or by implication comes into or continues in force and effect after Trade Contractor's completion of the Work, shall survive termination of the Trade Contract, whether by default or for convenience, and Trade Contractor's completion of the Work.

23. TERMINATION FOR CONVENIENCE

Construction Manager may upon written notice to Trade Contractor, without cause and without prejudice to any other right or remedy under this Agreement, at law or in equity, elect to terminate the remaining Work for Construction Manager's convenience. The termination shall be effective in the manner specified in Construction Manager's notice. Unless Construction Manager's notice directs otherwise, Trade Contractor shall immediately discontinue performance of the Work and the placing of orders for equipment, materials, supplies and other items and demobilize from the Project. Trade Contractor shall take the steps necessary to preserve and protect Work in progress and shall use its best efforts to mitigate its costs in connection with the termination. Construction Manager shall pay Trade Contractor a termination payment as Trade Contractor's sole and exclusive remedy in connection with Construction Manager's convenience termination. The termination payment shall be comprised of: (i) amounts invoiced and due for Work performed but not yet paid; (ii) payment for Work satisfactorily completed but not yet invoiced by Trade Contractor prior to the termination; (iii) retainage held by Construction Manager at the date of termination; and, (iv) all reasonable, actual termination costs incurred by Trade Contractor in terminating the Work (but excluding any and all costs and expenses incurred by Trade Contractor from and after the date of termination for those of its employees who are not directly performing required termination activities); provided, that if the termination was effected by Construction Manager due to the elimination or termination of work by Owner under the Owner Contract or other Owner action, or, as a result of the order of a court or public authority, then Trade Contractor's termination payment shall be limited to the amount paid by Owner to Construction Manager for the terminated Work under the Owner Contract, less Construction Manager's costs to obtain that amount from Owner. The Trade Contractor expressly accepts the risk that it will not be paid for work performed by it if the Construction Manager, for whatever reason, is not paid by the Owner for such work. In no event shall Trade Contractor be entitled to recover any profit or overhead on terminated Work. Trade Contractor's termination payment under this Section will constitute its final payment for the Work and will be processed and become due to Trade Contractor in accordance with the provisions in Section 5 herein.

24. CLAIMS INVOLVING OWNER

24.1 Recovery Limited to Amounts Received by Construction Manager

Notwithstanding anything contrary in this Trade Contract, Trade Contractor may recover damages for extra work, delays, interferences or other adverse impacts to the Work only to the extent the Owner is liable and limited to the cost Construction Manager actually receives from Owner compensation for such extra work, delays, interferences or other adverse impacts to the Work, subject to adjustments as provided herein. Construction Manager's liability to the Trade Contractor for any adverse impact to the Work or otherwise to Trade Contractor's performance under the Trade Contract attributable to the Owner, Architect/Engineer or their separate contractors shall be limited to the cost, schedule or other relief, if any, granted by and actually recovered from the Owner as set forth herein. Trade Contractor agrees to be bound to Construction Manager to the same extent that Construction Manager is bound to Owner, by the terms of the Contract Documents, and by any and all

preliminary and final decisions, determinations or agreements made by or between Construction Manager, Architect/Engineer or Owner or so authorized in the Contract Documents or by the court or arbitrator designated in the Contract Documents whether or not Trade Contractor is a party to such agreement or proceeding. Construction Manager and Construction Manager's surety shall not be liable to Trade Contractor in excess of any sum actually received from Owner on behalf of Trade Contractor and Construction Manager shall only be required to pay Trade Contractor if, and only if, Owner pays Construction Manager, which is an express condition precedent to Construction Manager's duty to pay Trade Contractor. Trade Contractor agrees to toll its rights under the Construction Manager's bond and this Agreement until such time as the Construction Manager has exhausted its Owner related dispute provisions.

24.2 Determination of Amounts

Construction Manager shall endeavor to request that the amount attributable to Trade Contractor's claim be identified separately in any change order, settlement, award or judgment. To the extent such change order, settlement, award, or judgment does not provide for a separately listed amount attributable to Trade Contractor's claim, the amount of such recovery shall be limited to the proportionate share due Trade Contractor on the basis of the ratio of the Trade Contractor's claim to other claims that are asserted, provided the Trade Contractor's claims and other claims are substantially similar and reasonably justified as to merit and actual costs incurred as determined by Construction Manager. In all events, the amount due Trade Contractor shall be limited to the amount actually recovered by Construction Manager from Owner, and shall be adjusted to compensate Construction Manager for Trade Contractor's proportionate share of the expenses and attorney's fees incurred by Construction Manager in pursuing such claims.

24.3 Presentation of Claims

Construction Manager may, at Construction Manager's option, (i) present to the Architect/Engineer, the Owner, or any court or arbitrator, in Construction Manager's name, or (ii) authorize Trade Contractor to present to the Architect/Engineer, the Owner, or any court or arbitrator in Construction Manager's name, all of Trade Contractor's claims, and to answer the claims of Architect/Engineer or the Owner involving Trade Contractor's Work. If such dispute is prosecuted or defended by Construction Manager, the Trade Contractor, at Trade Contractor's own expense, agrees to furnish all documents, statements, witnesses, and other information required by Construction Manager and to pay or reimburse Construction Manager for all costs incurred by Construction Manager in connection with the disputes including, without limitation, attorneys' fees and experts' and consultants' fees. In the event that any mediation, arbitration, litigation or settlement with the Owner results in a recovery by the Owner against the Construction Manager involving the Trade Contractor's Work, the Trade Contractor shall pay the Construction Manager its proportionate share of such recovery by the Owner against the Construction Manager, and pay the Construction Manager its proportionate share of the expenses and attorney's fees incurred in defending such claim(s).

24.4 Duty to Cooperate

Trade Contractor agrees to use its best efforts to make available to Construction Manager such documents, drawings and other materials and witnesses and information as are reasonably available to it to assist Construction Manager in any claim against Owner that relates to or concerns the Work.

24.5 No Obligation to Pursue Claims

Notwithstanding any contrary herein, Trade Contractor expressly acknowledges that Construction Manager is not obligated or required to pursue Trade Contractor claims as against Owner if Construction Manager, in its sole discretion, after review of Trade Contractor's claim, has deemed the claim to lack merit in whole or in part, or such claim is otherwise not permitted under any agreement between Construction Manager and Owner.

25. DISPUTES

25.1 Construction Manager as Initial Decision Maker

Except as otherwise provided in the Trade Contract, Construction Manager shall initially decide all disputes arising out of the Trade Contract. Construction Manager shall reduce its decision to writing and furnish a copy thereof to Trade Contractor. Construction Manager's decision shall be final and conclusive unless Trade Contractor advises Construction Manager in writing within forty-eight (48) hours of receiving the decision of the bases for its disagreement with the decision. Trade Contractor agrees that if it does not contest the Construction Manager's decision within the time and in the manner required under this Section, Construction Manager's decision shall be final and conclusive and the Trade Contractor shall be deemed to have waived any right to contest the decision. Construction Manager decisions properly contested by Trade Contractor shall be resolved as provided herein.

25.2 Construction Manager's Right to Demand Arbitration

Claims and disputes between Construction Manager and Trade Contractor arising out of or in connection with the Trade Contract or the Work shall be resolved by litigation unless Construction Manager, at its sole option, advises Trade Contractor in writing prior to the institution of litigation with respect to a claim or dispute, or within thirty (30) days after either party has instituted litigation with respect to the claim or dispute that Construction Manager elects to have the claim or dispute resolved by arbitration. In such event, Trade Contractor shall be bound by Construction Manager's election and any litigation filed shall be stayed by stipulation of the parties pending the conclusion of the arbitration proceedings. The arbitration proceedings shall be conducted pursuant to the Construction Industry Arbitration Rules issued by the American Arbitration Association then in effect. The parties shall afford each other informal discovery consistent with the discovery provisions of the Federal Rules of Civil Procedure, including the production of all documents related to the claim or dispute at issue and the deposition of witnesses having knowledge of facts pertaining to the claim or dispute at issue.

25.3 Consolidation or Joinder

In the event Construction Manager is involved in a separate arbitration, litigation, mediation or other legal proceeding in which any aspect of the Trade Contractor's Work or entitlement to payment is at issue, or questions of law or fact common to the Trade Contractor's performance under the Trade Contract are involved; or, if complete relief cannot be afforded in such proceeding without the Trade Contractor's participation therein, Trade Contractor hereby consents, upon written demand by Construction Manager, to its consolidation or joinder in that proceeding to the applicability of any rules or procedures applicable to such proceeding; and hereby waives any objections to the location or forum in which the proceeding is pending. In the event Trade Contractor has initiated litigation against Construction Manager at the time Construction Manager's demand for consolidation or joinder is received, and that proceeding cannot be consolidated with the proceeding in which the Construction Manager is involved, Trade Contractor agrees to dismiss or, in the event dismissal would prejudice Trade Contractor's rights, stay the litigation.

25.4 Duty to Continue Performance Pending Dispute Resolution

Trade Contractor acknowledges the importance of performing and completing the Work and its other obligations under the Trade Contract in a timely manner. Trade Contractor agrees that its rights in connection with any claim or dispute with Construction Manager in connection with the Trade Contract shall be determined as provided in this Section, and that it shall not be entitled to suspend or otherwise delay its performance and completion of the Work or the performance of its other obligations under the Trade Contract based on any alleged breach by Construction Manager or claim or dispute between the parties, regardless of whether such breach, claim or dispute is the subject of dispute resolution between Construction Manager and Trade Contractor.

26. WAIVER OF NOTICE AND HEARING RELATIVE TO PREJUDGMENT REMEDIES

The Trade Contractor expressly waives its right to notice and hearing under Connecticut General Statutes §52-278a through §52-278g inclusive relative to prejudgment remedies, and agrees that the Construction Manager may issue a writ for a prejudgment remedy (attachment, garnishment) by its attorney without securing a Court Order.

27. AUDIT AND RECORD RETENTION.

Trade Contractor's records related to the Project and the Trade Contract shall be subject to audit and shall be made available to Construction Manager for that purpose upon five (5) days prior written notice. To the extent the foregoing audit provisions are different than, or inconsistent with, any audit provisions found in the Owner Contract, the more stringent requirement shall control. Unless the Contract Documents or Applicable Law requires a longer period, Trade Contractor shall maintain its entire Project and Trade Contract related records, financial and otherwise, for a period of ten (10) years after the Construction Manager achieves final completion of its work at the Project.

28. CONFIDENTIALITY

28.1 Duty to Keep Information Confidential

Trade Contractor acknowledges and agrees that it will execute any confidentiality or nondisclosure agreements that may be reasonably required by the Construction Manager and/or Owner. Trade Contractor further acknowledges and agrees that Construction Manager may disclose certain information to Trade Contractor for purposes of the Work that Construction Manager and/or Owner considers to be confidential or proprietary or to constitute trade or business secrets (collectively "Confidential Information"). In the absence of more stringent requirements contained in the Owner Contract, when

Construction Manager and/or Owner discloses any information designated as Confidential Information to Trade Contractor, Trade Contractor agrees that:

- (1) the Confidential Information shall be used solely for the purpose of performance under the Trade Contract and disclosed only to those of Trade Contractor's employees who have a need to know the information for that purpose;
- (2) it shall not disclose Confidential Information to any third party without Construction Manager's prior written consent;
- (3) it will take precautions to prevent the disclosure of the Confidential Information that are no less stringent than those employed to preserve the secrecy of its own confidential business information or trade secrets, and in no event less than reasonable precautions; and
- (4) upon completion of the Work it will return all documents containing Confidential Information to the Construction Manager and/or Owner without retaining any copies thereof, or if such Confidential Information is contained in electronically stored documents, permanently delete such electronically stored Confidential Information.

28.2 Duration/Remedies

Unless a longer period is established by the Contract Documents, the provisions of this Section shall remain in force for a period of five (5) years after Construction Manager's final completion of its work at the Project. Trade Contractor agrees that in the event of its breach or threatened breach of its obligations under this Section, Construction Manager shall be entitled to equitable relief in order to restrain any continued or threatened breach.

29. MISCELLANEOUS

29.1 Integrated Agreement

The Trade Contract represents the entire integrated agreement between the parties with respect to the Project and supersedes all prior negotiations, proposals, correspondence, representations or agreements, whether written or oral, express or implied. This Trade Contract may only be amended or modified in a change order or other writing signed by both Construction Manager and Trade Contractor.

29.2 Choice of Law, Venue and Jury Waiver

This Trade Contract shall be governed by and construed in accordance with the laws of the state Connecticut, excluding the conflicts of laws principles thereof. For any action or proceeding involving claims and disputes between Construction Manager and Trade Contractor arising out of or in connection with the Trade Contract or the Work, Construction Manager and Trade Contractor expressly and unconditionally: (a) agree that the presiding federal or state court in the state of Connecticut shall have exclusive jurisdiction over the action or proceeding; and (b) **WAIVE THE RIGHT TO A TRIAL BY JURY IN THE ACTION OR PROCEEDING IN ANY AND ALL DISPUTES OR CLAIMS ARISING OUT OF OR IN RELATION TO THIS AGREEMENT.** If Construction Manager elects to resolve a claim or dispute by arbitration, the arbitration shall be venued in the state of Connecticut.

29.3 Interpretation of Provisions

Construction Manager and Trade Contractor represent and warrant that they have had ample opportunity to review this Trade Contract and all documents referenced herein, and to consult with their respective attorney's. The Trade Contract shall be construed without regard to any presumption or other rule requiring construction or interpretation against the party who caused it to have been drafted.

29.4 Execution of Trade Contract

The Trade Contract may be executed in counterparts, each of which will be considered an original.

29.5 Notice

All notices required or permitted pursuant to this Trade Contract shall be in writing and sent to the parties at the addresses set forth on the Trade Contract Agreement. Written notice shall be deemed to have been duly served if delivered by registered or certified mail or by courier service providing proof of delivery to the business address for the intended recipient identified in this Trade Contract or, if none is identified, the last business address of the intended recipient known to the party giving notice. Written notices may also be deemed to have been duly served if delivered via first class U.S. mail, email, or facsimile, but the party utilizing such alternative means shall bear the burden of proving delivery (e.g., facsimile confirmation).

29.6 Validity and Enforceability

The parties agree that if any provision of the Trade Contract is determined by a court to be unenforceable in whole or in part under Applicable Law, that determination shall not affect the validity and enforceability of the remainder of the Trade Contract and that only the provision (or part thereof) in question shall be deemed unenforceable. Accordingly, in the event that any one or more of the provisions of the Trade Contract shall be found to be contrary to public policy and unenforceable, the remaining provisions of this Trade Contract shall remain in full force and effect, and such term or provision shall be deemed stricken to the extent and in the jurisdictions necessary for compliance with Applicable Law.

29.7 Construction Manager’s Rights Not Waived

The failure of Construction Manager to insist upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

29.8 Remedies are Cumulative

The remedies provided to Construction Manager in the Trade Contract are cumulative and not exclusive and additional to any other remedies available to Construction Manager under Applicable Law.

29.9 Headings are for Convenience Only

The headings in this Trade Contract have been inserted for convenience or reference only and shall not in any manner affect the construction, meaning or effect of anything contained herein nor govern the rights and liabilities of the parties.

30. EXHIBITS

The following exhibits are incorporated into this Trade Contract as follows:

- Exhibit A – Contract Documents
- Exhibit B – General Safety and Health Procedural Regulations
- Exhibit C – Certification of Resident or Verified Contractor
- Exhibit D – Material and Equipment Stored Off-Site Billing Procedure
- Exhibit E – Sample Interim and Final Lien Waiver
- Exhibit F – Insurance Requirements
- Exhibit G – Sample Performance and Payment Bond Forms