

**GIAMBRONE CONSTRUCTION, INC.
SUBCONTRACT**

THIS SUBCONTRACT (the "Subcontract") is made as of the ____ day of ____, 200__ by and between Giambrone Construction, Inc ("Giambrone") of 10000 Aurora Hudson Road, Hudson, OH 44236 and _____ (the "Subcontractor") of _____.

THE PROJECT:

THE OWNER:

THE ARCHITECT:

CONTRACT PRICE: (Including all applicable sales and other taxes)

PAYMENT AND PERFORMANCE BOND: yes _____ no _____

Giambrone and the Subcontractor agree as set forth below.

ARTICLE I - SCOPE OF WORK

1.1 Giambrone employs Subcontractor as an independent contractor to perform all of the work (the "Subcontractor's Work") in accordance with this Subcontract and any and all Attachments to this Subcontract, including but not limited to, all addendum and accepted alternates that are all required for completion of the above referenced Project.

Furnish and install per plans, specifications, related sections and all addendums, with no exceptions, for a complete assembly of all work relating to the , including but not limited to:

- **All the specification sections of Division 01 General Conditions.**
- **Specification Section –**
- **Any and all related specification sections that maybe required to provide complete assembly.**

Subcontractor agrees to perform Subcontractor's Work under the general direction of Giambrone and subject to the final approval of the Architect or other specified representatives of the Owner, in accordance with the Contract Documents as defined in Section 1.2 herein. Subcontractor shall furnish all of the labor and materials, along with competent supervision, shop drawings and samples, required attic stock and closeout documents, tools, equipment, protection, hoisting, scaffolding, and permits which are necessary for such performance.

1.2 This Subcontract consists of this Subcontract, the terms and conditions set forth herein, any exhibits or addenda attached hereto and the contract between the Owner or General Contractor and Giambrone referencing this Project, and all amendments and supplemental documents thereto (together hereinafter referred to as the "Contract Documents"), all of which are as fully a part of this Subcontract as if attached to this Subcontract or repeated herein.

1.3 Subcontractor acknowledges that it has had full opportunity to examine a copy of the Contract Documents (other than provisions relating to the contract price or fee payable to Giambrone.) which are

available to it at Giambrone's offices. The Subcontractor is bound to Giambrone by all terms and conditions of this Subcontract and, except as otherwise provided herein, by all terms and conditions of the Contract Documents which is incorporated herein and is an integral part of this Agreement. Subcontractor shall be bound by all interpretations of the Contract Documents by Owner or its representatives furnished to it by Giambrone which are binding upon Giambrone. Subcontractor shall assume toward Giambrone all obligations and responsibilities which Giambrone assumes toward the Owner in the Contract Documents. Subcontractor, prior to beginning work, shall notify Giambrone of any claimed deficiencies, discrepancies, ambiguities or errors in the Contract Documents or substitute materials (including "or equal" materials) without Giambrone's prior consent. Subcontractor shall not deviate from the plans and specifications set forth in the Contract Documents without the written consent of Giambrone and/or the Owner. Notwithstanding the foregoing, any plan deviations and material substitutions desired by Subcontractor shall be submitted (in writing only) to Giambrone for approval by Owner, and if approved by Owner, shall be Subcontractor's sole responsibility. Subcontractor shall be responsible for and pay all additional costs, delays and damages to Giambrone, the Owner or others resulting from any such substitution. Subcontractor shall assume toward Giambrone all the obligations and responsibilities which Giambrone by the Contract Documents, assumes toward the Owner. The Contract Documents and this Agreement are intended to be complimentary so that anything required in one shall be of like effect as if required by both. In the event of any ambiguity or conflict, the provisions of this Agreement shall take precedence as to the extent of any conflict with the provisions of the Contract Documents. In no event shall the Subcontractor be entitled to greater rights, higher entitlements or more relief against Giambrone than Giambrone actually obtains from the Owner on Subcontractor's behalf with respect to the material supplied.

1.4 The Subcontractor's Work shall begin upon execution of this Subcontract and, subject to any authorized adjustments, shall be substantially completed not later than the time set forth in the Contract Documents.

1.5 Giambrone shall pay the Subcontractor for the satisfactory performance of the Work, subject to additions and deductions authorized pursuant to the Contract Documents, the contract sum of stated above (the "Contract Price"). The Contract Price shall include all applicable sales and other taxes and Subcontractor is responsible for the payment of all applicable taxes in connection with the Subcontractor's Work.

1.6 Subcontractor is responsible for conducting field measurements and promptly notifying Giambrone of any discrepancies that exist between field conditions and drawings. Subcontractor is also responsible for visiting the site within the ten days prior to subcontractor's scheduled commencement date and giving Giambrone at least seven days written notice of any site condition that would prevent or impede Subcontractor in meeting its scheduled commencement date.

ARTICLE 2 - PAYMENTS

2.1 Unless otherwise specified in an Addendum attached hereto Giambrone agrees to pay to Subcontractor monthly progress payments (the "Payment" or "Payments"), subject to additions and deductions authorized pursuant to the Contract Documents, for the satisfactory completion of Subcontractor's Work, the Contract Price in monthly payments less retention in the same amount that is withheld from Giambrone under its Contract with the Owner for the work performed in any preceding month, in accordance with estimates prepared by Subcontractor and approved by Giambrone and any other party whose approval is required under the Contract Documents and in accordance with the conditions set forth below. Subcontractor shall submit a schedule of values (the "Schedule of Values") for approval by Giambrone. Applications for monthly Payments shall be submitted on forms acceptable to Giambrone and in accordance with the approved Schedule of Values with such additional detail or substantiating information as may be requested by Giambrone. Payments made on account of materials not incorporated in the work, but delivered and suitably stored at the site, or at some other bonded location agreed upon in writing, shall be in accordance

with the terms and conditions of the Contract Documents if such Payments are due thereunder. Subcontractor shall provide monthly completed lien and claim waivers and affidavits from Subcontractor, sub-subcontractors and suppliers, on forms acceptable to Giambrone. It is specifically agreed and understood that payment to the Subcontractor of any amounts is dependent, as a condition precedent, upon Giambrone receiving payment, including retainer, from the Owner, for any such progress payment. It is further agreed and understood that the Subcontractor assumes the risk of Owner's creditworthiness and/or insolvency. This subparagraph shall inure to the benefit of any surety of Giambrone. In addition, Subcontractor expressly agrees to make no claims against any bond of Giambrone's unless and until Giambrone has received payment from the Owner, General Contractor or Construction Manager for Subcontractor's Work and has failed to make the approved payment in accordance with the Contract Documents to the Subcontractor within 30 days of receipt of such approved payment. Approval and Payment of Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by Giambrone, Owner, General Contractor or Construction Manager of any portion of Subcontractor's Work.

2.2 In the event Subcontractor does not submit to Giambrone such monthly estimates in time for Giambrone to include it in the Pay Application for that month, Giambrone may, at its option, either (i) include the monthly estimate in its next application for payment to the Owner or (ii) include in its monthly estimate to the Owner for Work performed during the preceding month such amount as it may deem proper for Subcontractor's Work for the preceding month and Subcontractor agrees to accept such approved portion thereof in lieu of monthly Payment based upon the estimate.

2.3 Final payment, constituting the entire unpaid balance of the Contract Price shall be due upon approval by all necessary parties of Subcontractor's Work, Subcontractor's compliance with all requirements of the Contract Documents and, upon payment having been received by Giambrone for all of Subcontractor's Work. It is agreed by Subcontractor that receipt of payment from the Owner, General Contractor or construction Manager to Giambrone is expressly made a CONDITION PRECEDENT to any obligation of Giambrone to pay Subcontractor. It is further agreed and understood that the Subcontractor assumes the risk of Owner's creditworthiness and/or insolvency. This subparagraph shall inure to the benefit of any surety of Giambrone. In addition Subcontractor expressly agrees that it shall make no claims against any bond of Giambrone's unless and until Giambrone has received payment for Subcontractor's work and has failed to make the approved payment in accordance with the Contract Documents to the Subcontractor within 30 days of receipt of such approved payment. Before issuance of final payment, the Subcontractor, if required by Giambrone, shall submit evidence satisfactory to Giambrone that (i) all labor obligations, including customary fringe benefits and payments due under collective bargaining agreements have been paid, (ii) all lower tier subcontractors and material men have been paid to date and are waiving their hen rights and bond claims upon the final payment of a specific balance due, (iii) the surety, if any, has consented to final payment, and (iv) all known indebtedness connected with Subcontractor's Work has been satisfied.

2.4 Giambrone may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Giambrone. In the event of any breach by Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion by other parties of any claim or lien against the Owner, Giambrone, Giambrone's surety, or the premises upon which Subcontractor's Work was performed, which claim or lien arises out of Subcontractor's performance of this Subcontract, Giambrone shall have the right, but is not required, to retain out of any Payments due or to become due to Subcontractor, an amount sufficient to completely protect Giambrone for any and all loss, damage or expense therefrom, until the claim or lien has been adjusted by Subcontractor to the satisfaction of Giambrone. Giambrone may also withhold legal expenses and overhead it incurs as a result of subcontractor's actions or inaction. This Section shall be applicable even though Subcontractor has posted a full payment and performance bond.

Giambrone may withhold payments for the unpaid balance of the Contract Price if it believes there is reasonable doubt that Subcontractor's Work may not be completed on schedule and in accordance with the

Contract Documents. Giambrone agrees to convey such concerns, in writing, to Subcontractor prior to withholding funds.

2.5 All sums tentatively earned by Subcontractor by the partial or complete performance of the Subcontract Work and any balance of unearned Subcontract funds shall constitute a fund for the purpose of:

2.5.1 First, full completion of the Subcontractor's Work;

2.5.2 Second, payment of any back charges or claims due Giambrone from Subcontractor on any project;

2.5.3 Third, payment to the lower tier subcontractors, laborers, material and service suppliers of Subcontractor who have valid and enforceable mechanic's lien claims or valid and enforceable bond claims (if the project is bonded), and such tentative earnings shall not be due or payable to Subcontractor or anyone else claiming in Subcontractor's place and stead, including but not limited to a trustee in bankruptcy, receiver or assignee of Subcontractor, until and unless such Subcontract work is fully and satisfactorily completed and such claims are fully paid and satisfied. At any time, Giambrone may demand written evidence of Subcontractor's financial capability to perform and that Subcontractor has made such payments.

2.6 Subcontractor shall pay promptly when due its labor, material, equipment and transportation costs, and its subcontractors. At any time, whether or not in connection with an Application for Payment, Subcontractor shall furnish to Giambrone such evidence of payment of bills and obligations incurred by the Subcontractor as Giambrone may require. If Subcontractor does not make payment as required herein, Giambrone shall have the right, but not the obligation, in addition to all other rights and remedies provided under this Agreement and the Contract Documents or by law, with or without notice to Subcontractor, at Giambrone's sole option and discretion, to make payment of any such past due bills or obligations. Any such payment whether by Joint Check, direct payment, offset or otherwise, shall constitute payment of earned proceeds, exclusive of retainage, on this Subcontract. Subcontractor shall be liable to Giambrone for an amount equal to 10% percent of any such payment for investigation and administrative expenses together with any and all costs, damages and expenses incurred, including, but not limited to, attorneys' fees.

If any Subcontractor, Laborer, Lower-Tier Subcontractor or Materialman of the Subcontractor or any other person, directly or indirectly acting for or through or under the Subcontractor files or maintains a Mechanic's Lien or claim against the Project, premises or any part thereof or any monies due from or to become due from the Owner or General Contractor, for or on account of any work, labor, services, materials, equipment or other items performed, provided or furnished in connection with the work of this Subcontract, any Change Order, extra work or Change Directive, the Subcontractor agrees to cause such liens and/or claims to be removed, satisfied or discharged at Subcontractor's expense by bond, payment or otherwise within ten (10) days of the filing thereof. In the event that Subcontractor shall fail for any reason to remove any such claim and/or lien, Giambrone shall have the right, but not the obligation, in addition to all other rights and remedies provided under this Agreement and the Contract Documents or by law, to cause such lien and/or claim to be satisfied, removed or discharged by whatever means Giambrone, in its sole discretion, chooses, at the sole cost and expense of the Subcontractor. Subcontractor shall be liable to Giambrone for an amount equal to 10% percent of any such payment for investigation and administrative expenses together with any and all costs, damages and expenses incurred, including, but not limited to, attorneys' fees.

ARTICLE 3 - PROSECUTION OF THE WORK/OUT OF SEQUENCE WORK

3.1 **TIME IS OF THE ESSENCE.** (A) Time is of the essence in this Agreement. Subcontractor shall keep itself informed as to the progress of the work of Giambrone, other subcontractors and third parties

and shall be prepared to commence its work promptly upon notice from Giambrone, and shall perform its work promptly thereafter so as not to delay, disrupt or damage the work of Giambrone, another subcontractor or any third party. Subcontractor acknowledges the right of Giambrone to schedule the work of this Subcontract as Giambrone, in its sole good faith discretion deems best. In no event shall the Subcontractor delay Giambrone, any other subcontractor or any third party performing work at the Construction Site. All float in any CPM Schedule belongs to Giambrone and shall be available for Giambrone's exclusive use in the scheduling of the Project. Subcontractor shall be liable to and reimburse Giambrone for any damages assessed against Giambrone and for any other damages, costs, or loss incurred by Giambrone as a result of delays or difficulties caused by the Subcontractor.

(B) Subcontractor shall begin, complete the various parts of its Work in accordance with the project schedule (and all modifications thereof) and comply in all respects with the project schedule, which are delivered by Giambrone to Subcontractor. In the event a time schedule is not delivered, the Subcontractor shall begin and complete the various parts of the work in accordance with the directions from time to time delivered by Giambrone to Subcontractor. If Subcontractor falls behind, fails to perform any phase of its Work in accordance with any such time schedule or directions, fails to employ an adequate number of properly skilled workmen or supervisors, fails to provide a sufficient or adequate amount of materials, equipment or supplies to the Construction Site or, in the opinion of Giambrone, fails to maintain a satisfactory rate of progress so as to complete the work of this Subcontract in the most expeditious and economical manner, then, upon Forty-eight (48) Hours notice issued by Giambrone to Subcontractor, the Subcontractor, shall, at Subcontractor's sole expense, increase crew sizes, increase number of shifts, employ more or better equipment, schedule such overtime work, substitute materials, change the sequence of performance, prosecute certain portions of the work in preference over others and/or take any other action as required or directed by Giambrone which may, in the sole opinion of Giambrone be necessary to promptly cure the Subcontractor's failure to comply with the time schedule or directions. In addition to issuing the Subcontractor directions, Giambrone shall have the right, but not the obligation, in addition to all other rights and remedies provided under this Agreement and the Contract Documents or by law, to provide additional labor, materials, equipment, supervision, and/or take such other action which Giambrone, in its sole discretion, deems necessary or appropriate to cure the Subcontractor's failure to comply and Subcontractor shall pay to Giambrone all of Giambrone's costs incurred and any and all damages and expenses incurred by Giambrone, including but not limited to attorneys fees, together with an administrative fee in the amount of fifteen (15%), the reasonableness of which is specifically agreed to by the Subcontractor. Giambrone shall be entitled to deduct the foregoing from any payment due or thereafter to become due to the Subcontractor on this project or any other project involving Giambrone and the Subcontractor. If such damages, costs and liability exceed the unpaid balance of the Subcontract, Subcontractor shall pay the difference to Giambrone. Any amounts owed by the Subcontractor to Giambrone shall be paid within fifteen (15) days of written demand for payment made by Giambrone to Subcontractor. Giambrone's decisions and directives under this Paragraph shall be final and binding upon the Subcontractor.

(C) Subcontractor further understands that delays caused by Subcontractor may give rise to liquidated damages or other damages in accordance with the Contract Documents. Subcontractor agrees that it shall be responsible for damages caused by its delays. Liquidated damages shall not be assessed for delays not caused by Subcontractor. Liquidated damages, when assessed, shall not exceed Subcontractor's proportionate share of the responsibility for such delay. This provision does not preclude any claim Giambrone may have for direct damages under law.

(D) Subcontractor submittal milestone dates will also apply. Subcontractor agrees that Giambrone shall withhold from Subcontractor the sum of \$1000.00 to ensure the timely submission and approval of all submittals required for Subcontractor's Work and Subcontractor shall include a line item in its schedule of values to reflect this provision. This line item shall not constitute an increase in the contract amount agreed to by the parties. Subcontractor shall be entitled to bill 50% of the line item upon final approval of its submittals by all applicable parties. Subcontractor shall be entitled to bill the remaining 50% of the line item

upon receipt of and acceptance by the Owner of all O & M manuals applicable to Subcontractors Work. Nothing contained herein shall operate to limit any other rights and/or remedies of Giambrone under this Subcontract.

3.2 Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing upon the performance of Subcontractor's Work and shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of Subcontractor's Work. The Subcontractor shall comply with federal, state and local tax laws, social security acts, unemployment compensations acts and worker's compensation acts in so far as applicable to the performance of this Subcontract. Liquidated damages shall not be assessed for delays not caused by Subcontractor.

ARTICLE 4 - SAFETY PRECAUTIONS & PROCEDURES (See Attachment 'D')

4.1 The Subcontractor shall take all reasonable safety precautions with respect to performance of Subcontractor's Work, shall comply with safety measures initiated by Giambrone and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property. The Subcontractor shall report within twenty-four (24) hours to Giambrone an injury to any of the Subcontractor's employees at the site.

ARTICLE 5 - CHANGES IN THE WORK

5.1 **CHANGES.** Giambrone, without nullifying this Subcontract, may direct Subcontractor in writing to make changes to Subcontractor's work. Adjustment, if any, in the Contract Price or contract time resulting from such changes shall be set forth in a written Change Order. **No Change Order shall be valid or enforceable unless signed in writing by Patricia Giambrone, President of Giambrone Construction and approved by owner. It is expressly understood and agreed to by Subcontractor that no other person has actual or apparent authority to sign Change Orders on behalf of Giambrone.**

5.2 **ADDITIONAL COSTS (A)** Subcontractor hereby waives and releases Giambrone from any claims, causes of action and/or actions which it now has or may have for damages or additional costs alleged to have been caused by an act or omission of Giambrone, unless Subcontractor delivers to Giambrone the following notices, information and/or documentation in the manner and within the time period specified:

- (1) Within seven (7) days after the commencement of any alleged damage or additional cost, Subcontractor shall provide Giambrone with Written Notice of such alleged damage or cost. Such Notice shall specifically set forth the causes for the damages and/or costs incurred.
- (2) At intervals of not less than fifteen (15) days thereafter and for the duration of period for which Subcontractor continues to incur damages and/or additional costs, Subcontractor shall provide to Giambrone the continuance of such cause, statements setting for the damage or additional costs being suffered, and
- (3) Within seven (7) days after the cessation of the cause of such damages and/or additional costs, Subcontractor shall provide Giambrone with a full accounting of the amount of such damage and additional costs claimed.

In the event Subcontractor provides all Notices required under this Paragraph, and Subcontractor and Giambrone do not agree to the entitlement to or amount to which the Subcontractor may be entitled, either party may require that the claim be resolved as provided in the Disputes provision of this Agreement.

(B) In the event Subcontractor shall incur damages and/or additional costs as a result of the act or failure to act by the Owner, Owner's Representatives and/or any of the Owner's other contractors and their subcontractors, Subcontractor shall provide Giambrone any and all notices in the form and manner required by the Contract Documents with respect to claims for damages and additional costs against Owner, Owner's representatives or Owner's other contractors and their subcontractors. Giambrone to the extent provided by the Contract Documents, will deliver this Notice to Owner, but the prosecution of such claims shall be at Subcontractor's sole expense. Giambrone shall not be liable for the prosecution of any such claim nor shall it be required to perform any other act on behalf of the Subcontractor, except, however, if arbitration shall be required or permitted by the Contractor Documents, Giambrone shall submit such claim to arbitration as provided under the Disputes provision of this Agreement. In no event shall Subcontractor be entitled to damages and/or additional costs as the result of the act or failure to act of any of Giambrone's other Subcontractor's unless the Owner is liable for and pays the same to Giambrone.

5.3 EXTENSIONS OF TIME. The Subcontractor agrees that the possibility that the Subcontractor may be subject to interference, disruption, hindrance or delay in the work, from any and all causes, is within the contemplation of the parties to this Subcontract and that the sole remedy for such interference, disruption, hindrance or delay shall be an extension of time as set forth herein:

(A) If Subcontractor is delayed, interfered with, disrupted or hindered by (1) a specific order of the Owner, Architect, other design professional, Owner's representatives, or their respective consultants, or by the performance of extra work ordered by the Owner, Architect, other design professional, Owner's representatives, or their respective consultants, or (2) by the failure of the Owner to provide the necessary site for installation, or (3) by causes not within the control of the Owner, Architect, other design professional, Owner's representatives, or their respective consultants and which are not delays resulting from acts of God, the public enemy, war, epidemics, quarantine restrictions, strikes, embargoes, abnormal or unforeseen weather or (4) any other cause beyond the Subcontractor's control which would entitle Giambrone to an extension of time under the Contract Documents, such delay will entitle the Subcontractor to an extension of time only and only to the extent that Giambrone is granted an extension of time by the Owner or General Contractor. Applications for extension of time shall not release the Subcontractor's sureties or any lower tier subcontractor from their obligations under this Subcontract Agreement. As a condition precedent to being granted an extension of time, Giambrone must be granted an extension of time by the Owner or General Contractor and the Subcontractor must provide Giambrone with the following:

(1) Within seven (7) days after the commencement of any such delay, interference, disruption, or hindrance, Subcontractor shall provide Giambrone with Written Notice of the delay. Such Notice shall specifically set forth the cause(s) for the delay; and

(2) At intervals of not less than fifteen (15) days thereafter and for the duration of the delay, interference, disruption, or hindrance, Subcontractor shall provide to Giambrone Written Notice which shall specifically set forth the continuing cause(s) of the delay, and

(3) At least five (5) working days before Giambrone is required to give notice in accordance with the terms of the Contract Documents, Subcontractor shall provide all notices and documentation of the delay so that Giambrone may be afforded a reasonable time to comply with the requirements of the Contract Documents as they relate to extensions of time.

(C) If the Subcontractor is delayed by an unreasonable act or omission to act of Giambrone, or its other subcontractors, the Subcontractor, subject to the approval of the Owner as may be required under the Contract Documents, shall be entitled to an extension of time only. As a condition precedent to being granted an extension of time, Subcontractor must provide notice to Giambrone of such delay within seven (7) days after the commencement of such delay setting forth the specific causes of the delay and at intervals of not less than

fifteen (15) days thereafter and for the duration of the delay, Subcontractor shall provide to Giambrone with Written Notice which shall specifically set forth the continuing cause(s) of the delay. Applications for extension of time shall not release the Subcontractor's sureties or any lower tier subcontractor from their obligations.

(D) The decision by Giambrone or the Owner or General Contractor to grant or deny any extension requested shall be final and binding upon Subcontractor, unless, within seven (7) days after the date upon which Giambrone provides notice of its decision, Subcontractor provides Giambrone with written notice of its intent to proceed under the Disputes Provision of this Agreement.

(E) It is specifically agreed and understood that the Subcontractor shall not be entitled to any increase in the Contract Price for damages by reason of any delay unless Owner is liable for and pays the same to Giambrone. In no event, shall Giambrone be obligated to apply to Owner for an increase in the Contract Price or for damages on behalf of Subcontractor unless such application is provided for by the Contract Documents and the Subcontractor, at its sole expense, performs all acts and provides all documentation necessary to process such claim. Upon receipt of payment by Owner to Giambrone for any such claim for Subcontractor, Giambrone shall pay the same to Subcontractor less expenses, including but not limited to attorneys fees, litigation costs and expenses, incurred by Giambrone in the presentation of such claim on Subcontractor's behalf.

Subcontractor agrees that all work subcontractor performs for this project, including all changes and deviations from the existing contract documents, is governed by the terms of this Subcontract.

ARTICLE 6 - INSURANCE AND INDEMNITY (See Attachment "C")

6.1 Prior to the start of Subcontractor's work, Subcontractor shall procure and maintain in force for the duration of the work, Worker's Compensation Insurance, Employer's Liability Insurance, Commercial General Liability Insurance, including Premises /Operations, Independent Contractors, Contractual Liability (sufficient to cover the liability assumed by the Subcontractor under the Subcontract), Property Damage, Completed Operations and all insurance required of Subcontractor under the Contract Documents. The Completed Operations coverage shall be maintained for at least three (3) years after the final completion of the Project. Giambrone, General Contractor, Construction Manager, Owner and Architect shall be named as additional insured's on each of these policies, except for Worker's Compensation. All Insurance coverage shall be placed with an insurance company duly licensed in the State of Ohio and shall be acceptable to Giambrone. All Subcontractor insurance carriers must maintain an A.M. Best rating of A- or better. Subcontractor shall obtain from each of its insurers a waiver of subrogation on Commercial General Liability in favor of Giambrone and the Owner and/or General Contractor or Construction Manager with respect to losses arising out of or in connection with the Work. Giambrone shall be listed as an additional insured to Subcontractors liability insurance policies and such insurance shall be endorsed so as to make it primary to any liability insurance carried by Giambrone.

6.2 To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Giambrone, the Owner, the Architect, and all of their agents, officers and employees from and against all claims, liens, causes of action, damages, lawsuits, losses and expenses, including, but not limited to attorney's fees and court costs, arising out of or resulting from this Subcontract or the performance, or failure in performance, of Subcontractor's Work or obligations under the Contract Documents, including any extra work, and including any such claim, damage, loss or expense which is attributable to bodily injury, sickness, disease, death, injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from, to the extent caused in whole or in part by any negligent acts or omissions of the Subcontractor or anyone directly or indirectly employed by him or anyone for whose acts he may be liable regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligations shall not be constituted to negate, abridge, or otherwise reduce any other right

or obligation of indemnity which would otherwise exist as to any party or person described in this Section 6.2. The obligations of Subcontractor under this Section 6.2 shall not extend to the liability of the Architect, its agents or employees, arising out of (a) the preparation of approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving or failure to give directions or instructions by the Architect, its agents or employees, providing such giving or failure to give is the primary cause of the injury or damage. Notwithstanding anything to the contrary herein, Giambrone, at its option shall have the right to participate in the defense of any claims asserted against it, approve the selection of counsel and approve the terms of any settlement made in its name or on its behalf. The scope of Subcontractors duty to defend and indemnify Giambrone shall not be limited in any manner whatsoever by any immunity or limitation of liability afforded to Subcontractor under the workers compensation laws, constitutions, or any other employee benefits acts. Subcontractor specifically waives any immunity afforded it by Ohio Constitution Article 2, Section 35 and Ohio Revised Code 4123.74.

ARTICLE 7 - PERFORMANCE BOND & LABOR AND MATERIAL PAYMENT BOND

7.1 A Performance Bond and a Labor and Material Payment Bond in a form satisfactory to Giambrone shall, required by Giambrone, be furnished in the full amount of this Subcontract. Such Bonds, if required by Giambrone, are to be executed by a surety company or companies authorized to execute such in the State of Ohio, which are acceptable to Giambrone and be written in favor of Giambrone. The Bonds furnished shall require an attorney-in-fact who shall execute the required bonds on behalf of the surety to affix thereto a certified and current copy of this power of attorney. Giambrone shall be paid by the surety any legal and court costs Giambrone incurs in the enforcement of its rights under said bonds. Cost of the bonds is included in the Subcontract amount.

ARTICLE 8 – WARRANTY

8.1 Subcontractor warrants that the material and work shall be free from defects and shall conform and meet the requirements of this Agreement and the Contract Documents. Subcontractor further warrants and guarantees that the work of this Agreement and materials and equipment furnished in connection therewith are new, of good material and workmanship, free from defects, fit, safe, merchantable, and sufficient for the purposes intended. Subcontractor shall furnish any separate warranty or guarantee for the Work, or portions thereof, required by the Contract Documents.

ARTICLE 9 - DEFAULT AND TERMINATION

9.1 **FAILURE OF PERFORMANCE.** Should Subcontractor fail to reasonably satisfy contractual deficiencies within forty-eight (48) hours from receipt of written notice from Giambrone, then Giambrone, without prejudice to any right or remedies, shall have the right, but not the obligation, in addition to all other rights and remedies provided under this Agreement and the Contract Documents or by law to correct, complete and/or supplement the Subcontractor's Work by whatever method it may deem expedient, including, without limitation, the engagement of a supplemental or replacement contractor, the purchase of materials, supplies and/or labor, the taking possession of Subcontractor's outstanding subcontracts and taking possession of and using in completing the Work, Subcontractor's tools, equipment, scaffolding, materials and supplies at the Construction Site or in transit to or in connection with the Work. Giambrone shall be entitled to exercise its discretion as to the means and methods for the prosecution and completion of the Subcontractor's Work as Giambrone in good faith deems appropriate and in the interests of the Project. The Subcontractor shall be liable to Giambrone for all expenses incurred by Giambrone in completing the Subcontractor's Work, including performance costs of whatever amount, together with an administrative fee in the amount of fifteen (15%) Percent, the reasonableness of which is specifically agreed to by the Subcontractor. In addition to the foregoing, the Subcontractor shall be liable to Giambrone for all other losses, expenses, damages and costs, including attorneys fees, incurred by Giambrone as a result of any termination of this Subcontract Agreement,

the performance of the Subcontract Work and discharge of Subcontractor's obligations including, but not limited, damages assessed by third parties and/or the Owner. If upon final payment to Giambrone, the unpaid Subcontract Balance exceeds such damages, costs and liability, then such excess shall be paid to the Subcontractor. If such damages, costs and liability exceed the unpaid balance of the Subcontract, Subcontractor shall pay the difference to Giambrone. Any amounts owed by the Subcontractor to Giambrone shall be paid within fifteen (15) days of written demand for payment made by Giambrone to Subcontractor. In no event shall the Subcontractor be entitled to be paid, to receive or to recover from Giambrone an amount, which exceeds the amount, which would have been due to Subcontractor as of the date of the termination. In the event of termination, the Subcontractor shall not be entitled to recover exemplary, special or consequential damages, anticipated profit or any other recovery not actually performed or incurred by the Subcontractor.

9.2 Any attempt by Subcontractor to cure any such default during the notice period must be bona fide and effective to correct or substantially assure correction of the default in order to merit rescission of the notice of default.

9.3 Giambrone may terminate this Subcontract for any reason upon five (5) days notice to the Subcontractor. In the event of such termination, Giambrone shall have the right, but not the obligation, in addition to all other rights and remedies provided under this Agreement and the Contract Documents or by law to complete the Subcontractor's Work by whatever method it may deem expedient, including, without limitation, the engagement of a supplemental or replacement contractor, the purchase of materials, supplies and/or labor, the taking possession of Subcontractor's outstanding subcontracts and taking possession of and using in completing the Work, Subcontractor's tools, equipment, scaffolding, materials and supplies at the Construction Site or in transit to or in connection with the Work. Giambrone shall be entitled to exercise its discretion as to the means and methods for the prosecution and completion of the Subcontractor's Work as Giambrone in good faith deems appropriate and in the interests of the Project. The Subcontractor shall be liable to Giambrone for all expenses incurred by Giambrone in completing the Subcontractor's Work, including performance costs of whatever amount, together with an administrative fee in the amount of fifteen (15%) Percent, the reasonableness of which is specifically agreed to by the Subcontractor. In addition to the foregoing, the Subcontractor shall be liable to Giambrone for all other losses, expenses, damages and costs, including attorneys fees, incurred by Giambrone as a result of any termination of this Subcontract Agreement, the performance of the Subcontract Work and discharge of Subcontractor's obligations including, but not limited, damages assessed by third parties and/or the Owner. If upon final payment to Giambrone, the unpaid Subcontract Balance exceeds such damages, costs and liability, then such excess shall be paid to the Subcontractor. If such damages, costs and liability exceed the unpaid balance of the Subcontract, Subcontractor shall pay the difference to Giambrone. Any amounts owed by the Subcontractor to Giambrone shall be paid within fifteen (15) days of written demand for payment made by Giambrone to Subcontractor. In no event shall the Subcontractor be entitled to be paid, to receive or to recover from Giambrone an amount, which exceeds the amount, which would have been due to Subcontractor as of the date of the termination. In the event of termination, the Subcontractor shall not be entitled to recover exemplary, special or consequential damages, anticipated profit or any other recovery not actually performed or incurred by the Subcontractor.

9.4 If after termination, in whole or in part, it is determined, for any reason, that the Subcontractor was not in default or that the Subcontractor was not properly terminated for default, then such termination shall have been deemed to be for the Convenience of Giambrone and the Subcontractor shall be entitled to the actual direct cost of all Subcontract Work satisfactorily performed and materials purchased prior to notification of termination. The Subcontractor shall not be entitled to compensation for profit and overhead. The Subcontractor shall not be entitled to compensation for work not performed or materials not purchased. The Subcontractor shall not be entitled to recover exemplary, special or consequential damages, anticipated profit on account of such termination or on account of Giambrone's breach of the Subcontract Agreement

9.5 Giambrone may terminate this Agreement at anytime prior to or after commencement of the Subcontract

Work by the Subcontractor. Any such termination shall be at the sole option of and for the convenience of Giambrone. In the event of such termination, the Subcontractor shall turn over all equipment and materials already ordered, purchased, and/or delivered to the Project. The Subcontractor shall be entitled to the actual direct cost of all Subcontract Work satisfactorily performed and materials purchased prior to notification of termination. The Subcontractor shall not be entitled to compensation for profit and overhead. The Subcontractor shall not be entitled to compensation for work not performed or materials not purchased. The Subcontractor shall not be entitled to recover exemplary, special or consequential damages, anticipated profit on account of such termination or on account of Giambrone's breach of the Subcontract Agreement. In the event of such termination, the Subcontractor shall undertake all action(s) necessary or required to transfer Subcontractor's Work to Giambrone, including, but not limited to, assignment of sub-subcontracts and/or purchase order(s) and assistance in the coordination of the transfer of work.

(B) Giambrone may instruct the Subcontractor to suspend, delay or interrupt all or any part of the Subcontractor's Work for the period of time that Giambrone deems appropriate. Any such delay or suspension shall be at the sole option and for the convenience of Giambrone. In the event of such delay or suspension, the Subcontractor shall be entitled to an extension of time for the performance of its Work. In no event shall Subcontractor be entitled to an adjustment in the Subcontract Price contained in this Agreement.

ARTICLE 10 – DISPUTES

10.1 Unless otherwise prohibited by this Subcontract Agreement or barred and/or waived by the Subcontractor's failure to adhere to notice requirements or other terms and conditions of this Subcontract. All claims, disputes, and other matters in controversy or question between Giambrone and the Subcontractor arising out of or related to this Subcontract shall be decided in accordance with this section:

(A) In the event that any dispute shall arise which involves any aspect of the Contract Documents or the correlative rights and duties of the Owner as defined in the Contract Documents, then the Subcontractor's rights as to such dispute or claim shall be determined solely by the applicable provisions of such Construction Contract, including any dispute determination provisions set forth in the Construction Documents. The Subcontractor and its sureties shall be bound by the administrative determinations, arbitration awards or judgments that may be, would be and/or are binding upon Giambrone as they relate to such claims.

(B) Subcontractor shall give Giambrone written notice as required by the Contract Documents of any action, which the Subcontractor desires Giambrone to take Subcontractor's behalf against Owner in connection with any dispute identified in Paragraph (A) including, if provided by the Contract Documents, the submission of such claim to arbitration. Subcontractor shall be responsible for the preparation, presentation and/or prosecution of any such proceeding at its own cost and expense and Giambrone will support the Subcontractor. Subcontractor shall be liable for all expenses incurred by Giambrone in the presentation or prosecution of any such claim, including but not limited to litigation costs, arbitration costs and/or attorneys' fees. In the event Subcontractor's claim does not involve any issues in which Giambrone has or may have an interest, Giambrone will designate such arbitrator(s) as Subcontractor requests. If the matter in dispute is required to be submitted to arbitration under the Contract Documents, Subcontractor shall be bound by the decision of the arbitrators as therein provided.

(C) Any dispute between Subcontractor and Giambrone, which is not governed by the provisions of Paragraphs A or B, shall be resolved solely by arbitration in accordance with Chapter 2711 of the Ohio Revised Code. Arbitration shall be initiated by the service of a Demand for Arbitration being served in writing upon the other party who shall serve a Response within thirty (30) days of receipt of the Demand. The parties shall thereafter select an arbitrator, who shall be an attorney experienced in the field of construction law. If the

parties fail to select an arbitrator within thirty (30) days of service of the Response, then the party seeking arbitration may file an application with the Court pursuant to 2711 for the appointment of an arbitrator who shall be an attorney experienced in the field of construction law. The conduct of the Arbitration, any hearings, the issuance of orders, and other procedural matters shall be governed by the Rules of the American Arbitration Association then in effect as they relate to the Construction Industry provided, however, that the parties shall be entitled to discovery pursuant to the Ohio Rules of Civil Procedure and the Ohio Rules of Evidence shall apply to the conduct of all hearings. In the event of any ambiguity or conflict, the provisions of this Agreement shall take precedence. The award of the arbitrator(s) shall be final and binding upon the Giambrone and Subcontractor without the right of appeal to the courts. Judgment may be entered in accordance with applicable law by any court having jurisdiction thereof.

(D) It is specifically agreed and understood, that to the extent possible and permitted by the Contract Documents, all parties necessary to resolve a claim or dispute shall be parties to the same dispute resolution proceeding. To the extent that a Claim or Dispute between Giambrone and the Subcontractor involves, in whole or in part, claims between Giambrone and the Owner, such claim or dispute shall be decided by the same tribunal and in the same forum as claims or disputes between Giambrone and the Owner. In the event that the provisions for the resolution of claims between Giambrone and the Owner do not permit joinder or consolidation of third parties such as the Subcontractor, the resolution of a Claim or Dispute between Giambrone and the Subcontractor which involves, in whole or in part, claims between Giambrone and the Owner, shall be stayed pending conclusion of any claim or dispute resolution proceeding between Giambrone and the Owner.

(E) The prevailing party in any arbitration, lawsuit, action, or any other final, binding dispute proceeding upon which Giambrone and Subcontractor may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.2 Any and all actions, causes of actions, suits, arbitrations and/or other proceedings shall be brought in Portage County, Ohio. Subcontractor agrees that any arbitration hearing shall take place in Portage County, Ohio. Subcontractor agrees to produce itself and any of its employees, officers, directors, managing members, and representatives for depositions in Portage County, Ohio at a location to be determined by Giambrone. Subcontractor also agrees to conduct any depositions of Giambrone representatives in Portage County, Ohio,

ARTICLE 11- CONFIDENTIALITY

11.1 Each of the parties hereto agrees to use its best efforts to keep confidential any and all information with respect to the other party which it has received as a result of any discussions, contacts, or pursuant to services provided in the connection with this Subcontract and which is not otherwise available to the parties. During and subsequent to the term of this Subcontract, the Subcontractor shall keep confidential any and all information and data with respect to Giambrone's business which is not otherwise available to the public. Subcontractor acknowledges that damages in the event of a breach of this covenant might be difficult to ascertain, and it is therefore agreed that Giambrone, in addition to and without limiting or abridging any other remedy or right available to it, shall have the right to an injunction against Subcontractor issued by a court of competent jurisdiction enjoining said breach. This covenant shall survive the termination of this Subcontract.

ARTICLE 12- MISCELLANEOUS

12.1 This Subcontract shall be governed by the laws of the State of Ohio.

12.2 Giambrone may, at its option, require Subcontractor to employ union labor. Upon demand by Giambrone, Subcontractor shall promptly take whatever steps which are legally available to resolve and terminate jurisdictional disputes among the trades involving all or a portion of the Work, including but not limited to, appropriate proceedings with the National Labor Relations Board. Subcontractor agrees to require its subcontractors and their subcontractors, if any, to be bound in a like manner.

12.3 Failure by Giambrone in any instance to insist upon observance or performance by Subcontractor of any terms, conditions, or provisions of this Subcontract shall not be deemed a waiver by Giambrone of any such terms, conditions or provisions, and observance or performance thereof. No waiver shall be binding upon Giambrone unless the same is in writing signed by Giambrone and shall then be binding with regard to the particular instance referred to in said writing only. Waiver of any one breach shall not be deemed a waiver of any other breach. In addition, payment of any sum by Giambrone to Subcontractor with knowledge of any breach shall not be deemed to be waiver of such breach or any other breach.

12.4 The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or age. The Subcontractor shall insure that employees are treated equally during employment without regard to their race, color, sex, religion, national origin or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by an appropriate agency of the United States government setting forth the requirements of these nondiscrimination provisions. The Subcontractor shall state, in all solicitations or advertisements for employees placed by or on behalf of Giambrone, that all qualified applications will receive consideration for employment without regard to race, color, sex, religion, national origin or age. Unless exempt, Subcontractor shall comply with the Equal Employment Opportunities of the Civil Rights Act of 1964 (as amended), Executive Order 11246, and 11375 (as amended), Age Discrimination in Employment Act of 1967, Rehabilitation Act of 1973 and the Vietnam Era Readjustment Act of 1974, and all other applicable governmental laws, orders, and regulations.

12.5 The Subcontractor represents and warrants that it will comply in all respects with all rules, regulations, policies and orders of the Immigration Reform and Control Act of 1986 including any amendments, and Subcontractor indemnifies and holds harmless the Contractor, the Owner, the Architect, the Civil Engineer, and their agents and employees from any claims, damages, losses and expenses (including attorneys fees) arising out of or resulting from the Subcontractor's failure to comply with any rule, regulation, policy or order of The United States Immigration and Naturalization Service.

12.6 Unless otherwise provided, any notice, request, report or other document required or permitted under this Subcontract shall be in writing and shall be deemed to have been duly given on the date delivered or, if mailed, two (2) days after such mailing.

12.7 This Subcontract (including any attachments and Contract Documents referenced herein) constitutes the entire agreement and understanding between the parties with respect to the matters contained herein, and supersedes any prior agreement and understandings related to the subject matter hereof. This Subcontract may be modified or amended only by a written instrument executed by both parties hereto.

12.8 Subcontractor shall not assign any of Subcontractor's Work under this Subcontract nor subcontract the whole or any part of Subcontractor's Work to be performed hereunder without, in each such case, the prior written consent of Giambrone.

12.9 If any provision of this Subcontract is or becomes or is deemed invalid, illegal or unenforceable under the applicable laws or regulations of any jurisdiction, such provision will be deemed amended to the

extent necessary to conform to applicable laws or regulations or, if it cannot be so amended without materially altering the intention of the parties, it will be stricken, and the remainder of this Subcontract will remain in full force and effect.

12.10 The Subcontractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent rights and shall save the Owner, General Contractor, Construction Manager and Giambrone harmless from loss on account thereof, except for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but ff the Subcontractor has reason to believe that the design, process or product specified is an infringement of a patent, it shall be responsible for such loss unless Subcontractor promptly gives such information to Giambrone.

12.11 Subcontractor acknowledges, declares, represents and agrees that the individual signing this Subcontract on behalf of Subcontractor has full authority to do so and has been authorized by Subcontractor to sign on behalf of Subcontractor. The individual signing on behalf of Subcontractor warrant that he or she is authorized to bind Subcontractor.

THIS SUBCONTRACT IS EXPRESSLY MADE SUBJECT TO, AND ACCEPTANCE IS STRICTLY LIMITED TO, THE TERMS AND CONDITIONS STATED HEREIN. THIS SUBCONTRACT IS BEING SENT TO YOU ALREADY EXECUTED BY GIAMBRONE.

ANY ATTEMPTED MODIFICATIONS OF THIS SUBCONTRACT SHALL NOT BECOME A PART OF THIS SUBCONTRACT AND SHALL NOT BE BINDING ON GIAMBRONE UNLESS EXPRESSLY AGREED TO IN WRITING BY GIAMBRONE AS AN ADDENDUM TO THIS SUBCONTRACT.

ATTACHMENTS:

- "A"-Special Conditions
- "B"-List of Contract Drawings and Specifications
- "C"-Minimum Insurance Requirements
- "D"-Construction Safety Policy for Subcontractors
- "E"-Equal Opportunity, Attachment
- "F"-Partial Lien Waiver & Affidavit
- "G"-Full and Final Lien Waiver & Affidavit
- "H"-W-9 Request for Taxpayer Identification Number and Certification (When Applicable)
- "I"-Exemption Certificate (When Applicable)
- "J"-Contractor Affidavit
- "K"-Reference Checks (When Applicable)
- "L"-Notice of Commencement (When Applicable)
- "M"-Allowances & Alternates (When Applicable)
- "N"-Owner Required Documents (When Applicable)
- "O"-Scope Review Meeting Notes (When Applicable)
- "P"-BWC Drug Fee Workplace Program

IN WITNESS WHEREOF the parties hereto have executed this Subcontract the day and year first written above, and by signing this subcontract, we are hereby agreeing that this project is to be done in phases and it is imperative the crewmen and materials are available as needed with proper notification by Giambrone Construction, Inc.

GIAMBRONE CONSTRUCTION, INC.

_____:

By: _____

By: _____

Patricia M. Giambrone, President

Its: _____

Date: _____

Date: _____

ATTACHMENT "A" LIST OF "10-DAY" SUBMISSIONS & SPECIAL CONDITIONS

**MUST BE RECEIVED BY OUR OFFICE WITHIN 10 DAYS OF YOUR SUBCONTRACT AWARD:
(Liquidated Damages will be assessed to base contract amount, on a daily basis until items are received.)**

- **Subcontract:** Initial all pages of the contract. Only original signatures will be accepted, please use blue ink. If we do not receive a copy of the fully executed subcontract agreement, with in 30 days of its issue date, Giambrone Construction will consider your subcontract to be in full force and in acceptance of all the terms and conditions as it is written without exception. It is further agreed and understood that commencement of the work required by the subcontract agreement shall constitute acceptance of all terms and conditions of the subcontract.
- **W-9 Form:** The attachment "H"(W-9 form) must be completed, signed and returned to this office.
- **Workers Compensation Insurance:** Workers Compensation Certificate must be submitted.
- **General Liability Insurance:** A current and site-specific certificate must be submitted. Limits are noted on the attachment "C" and additional insured must be noted.
- **MSDS Manuals and Safety Plans:** Required by OSHA a copy of your corporate manuals and safety plan must be maintained by your on site representative and a copy must be submitted to this office. Documents will be processed and forwarded to our on site company representative and will be maintained on file at the site in the designated area. The manuals can be returned, if requested, in writing, at the project completion. You will be notified in writing at the respective time and the documents maybe picked up at our office.
- **Written Hazard Communication Plan:** Giambrone Construction's plan is included this packet, please review.
- **Schedule of Values:** Your schedule of values must be submitted. The items must be broke down by area, floor and elevation, and list separately the labor and material. This information will be the basis for schedule activities and billings. Also, list the duration's for each activity.
- **Labor Rates:** See the enclosed sample form for the Labor Cost Breakdown. The owner is requesting prior approval of labor rate costs. Complete and forward to our office for approval process.
- **Submittals, Samples and Shop Drawings:** Items must be submitted to our office. The required copies are as follows, unless noted otherwise: 8 submittals, 5 samples and 1 reproducible and 7 copies of shop drawings. Your respective submittal log has been included, please review. Discrepancies need to be forward to me via fax within 3 days of receipt, otherwise this log will be process and you will be expected to submit those items.

Special Conditions:

Subcontractor acknowledges that he has familiarized himself with the site and is fully aware of site conditions as they presently exist, and are expected to exist at the time their contract work is to be performed. This specifically applicable to scheduling, performance (methods, means and equipment) as applicable to execution of contract work.

Subcontractor warrants that he is aware that time is of the essence insofar as project scheduling is concerned and milestone dates set forth in project schedule and/or outlined below must be met. Subcontractor assumes all

responsibility to meet schedule except where start and execution of his contract work is delayed by other. Means and methods employed by the Subcontractor shall include but not limited to manpower/shift work/off-sequenced operations and/or overtime.

Subcontractor further acknowledges the time of the year the project is being constructed, and warrants that all working conditions relevant to the location of work during this time frame are reflected and included in the scope work.

Due to the nature of this project and the close proximity of work to occupied areas, **all** project special conditions must be adhered to at all times. The following listing of special job conditions as they apply to this project (refer to contract documents for additional information). Subcontractor shall be responsible for proper indoctrination of all personnel prior to their placement on this project. **There will be no exceptions.**

Special Conditions as they pertain to all on site construction personnel.

- **THE CITY CONTRACTOR REGISTRATION FORM MUST BE SUBMITTED TO THE CITY AND A CITY LICENSE MUST BE OBTAINED.**
- Sexual harassment consisting of but not limited to offending actions/words and deeds **WILL NOT BE TOLERATED** in any form or manner.
- Limited space for storage and access to building. Access for personal and material(s) deliveries shall be limited to only that route as approved by the Owner, Owner's Agent and/or our firm. Keep driveways and entrances serving the premises clear and available to the Owner and the Owner's employees at all times. Do not use these areas for parking or storage of materials and equipment on site.
- Parking shall be only at off site area designated by our Superintendent. Violators will be towed at their expense with no warnings.
- Deliveries shall be coordinated with Giambrone Construction, Inc. Project Superintendent. On site storage must be reviewed and approved by Giambrone Construction, Inc. Superintendent.
- Access for personal and material(s) deliveries shall be limited to only that route as approved by Giambrone Construction, Inc.
- Jobsite personnel shall observe proper dress code at all times (no shorts, cut-offs, tank tops, and etc..).
- Jobsite personnel shall exercise appropriate language and deportment at all times.
- Use or travel to other area of building, or outside designated construction area(s) is prohibited.
- Special care shall be taken to clean up all litter (lunch, coffee break, and etc..). Only designated approved area(s) shall be utilized for lunch/break purposes.
- There will be **no smoking** in building. Smoking will be permitted at designated exterior areas only.
- No radios will be allowed on site.
- Contact with students is strictly prohibited.
- All subcontractors are responsible for the layout of their respective scope of work.
- All subcontractors are responsible for the cleaning of their respective scope of work

Failure to comply with special conditions will be grounds for immediate removal from site of offending person(s), and said persons shall be liable to prosecution to the full extent as allowed by law.

The Subcontractor shall complete all work as listed in this Subcontract in strict conformance with the plans, specifications, addendums, and all other Contract Documents in all respects and are bound by any and all parts insofar as they relate in any part or in any way to the work.

The Subcontractor is responsible for all work in sections listed in this Subcontract unless specifically noted otherwise, even if such work is not normally a part of your trade or class of work.

Work also included and/or restated is not a limitation of the Scope of Work. References noted to drawings, numbers, sections or details, etc. or to specification divisions, sections, articles or paragraphs, etc. are made for convenience only. Similar details and specifications etc. also applies.

ATTACHMENT "B" LIST OF CONTRACT DRAWINGS AND SPECIFICATIONS

DRAWINGS:

Specs

Addenda

ATTACHMENT "C" MINIMUM INSURANCE REQUIREMENTS

GIAMBRONE CONSTRUCTION, INC

*REFER TO CONTRACT DOCUMENTS ATTACHED FOR FURTHER REQUIREMENTS AND
COVERAGE REQUIREMENTS, IF ANY.*

The Subcontractor shall maintain such insurance as will adequately protect himself, Giambrone, and the Owner from claims for bodily injury and property damage arising directly or indirectly from operations under this Contract, whether such operations be by Subcontractor or by anyone directly or indirectly employed by subcontractor, or anyone for whose acts Subcontractor may be liable, and Subcontractor shall be liable to Giambrone for failure to maintain such insurance. Insurance shall be written for not less than the following limits of liability, or limits of liability specified in the Contract Documents, whichever is greater:

- **Workers' Compensation Insurance** - for the full liability under the law of the state where the work is to be performed.
- **Employers Liability (Ohio Stop Gap)** - Each Accident Limit \$1,000,000; Disease Aggregate Limit \$1,000,000; and Each Disease Employee Limit \$1,000,000.
- **Commercial General Liability Insurance** - with minimum limits- General Aggregate \$2,000,000; Products-Completed Operations Aggregate \$2,000,000; Personal & Advertising Injury \$1,000,000; Each Occurrence \$1,000,000; Fire Damage (any one fire) \$100,000; and Medical Expense (any one person) \$5,000.
- **Contractual Liability Insurance** - to cover the obligations of the Subcontractor set forth in the Subcontract, with minimum limits as required for Commercial General Liability Insurance.
- **Automobile Liability Insurance** - for all vehicles used in performance of the work, whether owned, hired, or non-owned, with minimum limits of \$1,000,000 Combined Single Limit.
- **Umbrella Insurance (Excess of the General Liability, Automobile Liability, and Employers Liability Limits)** in the amount of \$4,000,000 Each Occurrence.

GIAMBRONE CONSTRUCTION, INC., _____ ARE REQUIRED TO BE LISTED AS ADDITIONAL INSURED'S (INCLUDING PRODUCTS-COMPLETED OPERATIONS), WHICH MUST BE ON FORM CG2010 (11/85) OR ITS EQUIVALENT, CG2010 AND CG2037 (10/01) OR (7/04) AND ACCOMPANY ALL CERTIFICATES OF INSURANCE. GIAMBRONE SHALL BE LISTED AS AN ADDITIONAL INSURED TO SUBCONTRACTORS LIABILITY INSURANCE POLICIES AND SUCH INSURANCE SHALL BE ENDORSED SO AS TO MAKE IT PRIMARY TO ANY LIABILITY INSURANCE CARRIED BY GIAMBRONE.

These limits and requirements for listing additional insureds will apply unless additional limits or additional insureds are required by the General Conditions of the Contract between the Owner and Giambrone.

Certificates giving evidence of this coverage are to be given by the insuring company to Giambrone **BEFORE THE WORK IS STARTED** and are to be endorsed to the effect that should any of the policies be materially changed or canceled before the expiration date thereof, the issuing company will give **thirty (30) days prior written notice** to Giambrone. Additionally, the project name must be noted on the Certificate. Subcontractor shall not contract for, nor permit the performance of any part of the work without imposing obligations as set forth above upon any subcontractor and shall furnish Giambrone, at its request, with evidence of such coverage.

SEE ATTACHED SAMPLE

Attachment "D"

Construction Safety Policy for Subcontractors

Giambrone Construction, Inc. is hereinafter referred to as "Giambrone" and subcontractors are hereinafter referred to as "Subcontractor."

1. The Subcontractor shall take all reasonable safety precautions with respect to its Work, shall comply with all safety measures initiated by Giambrone and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. The Subcontractor shall report within 24 hours to Giambrone's any injury to any of the Subcontractor's employees at the site. In addition, the Subcontractor will submit to Giambrone, its drug and alcohol policy and program prior to commencing work. In the absence of its own drug/alcohol policy and program (which must first be approved by Giambrone), the Subcontractor agrees to abide by Giambrone's Policy, which can be obtained via written request to Giambrone. Any Subcontractor's or sub-Subcontractor's employees directly or indirectly involved in an incident may, at Giambrone direction, be required to submit to a drug/ alcohol screen at time of the incident, in accordance with either the Subcontractor's approved policy or Giambrone's Policy. At the time of an incident, if Giambrone's requests it, the Subcontractor or sub-Subcontractor will request the employee(s) involved in the incident to sign the Release attached. Refusal to sign must result in disciplinary action by Subcontractor against the employee as outlined in the Subcontractor's approved policy or Giambrone's Policy.
2. The utilization of hard hats is mandatory on all of Giambrone's projects, however, at the discretion of Giambrone's superintendents, this mandate may be modified.
3. A job site emergency telephone with a posted list of emergency numbers will be maintained by Giambrone.
4. Posting of OSHA and other general warning, job site required posters will be maintained by Giambrone and each Subcontractor.
5. Each Subcontractor will supply and maintain its own first aid kit and supplies.
6. Each Subcontractor will keep passageways, stair landings and other general walkways free of debris and tripping hazards. Extension cords will be elevated, covered or kept out of the general walkways.
7. Each Subcontractor will remove all of its debris and waste material from the immediate work area on a daily basis.
8. Unused material will be removed from the work area to the Subcontractor's general storage area daily, unless it is required for an unfinished operation. Material in the work area will be stored in an orderly manner out of the general walkways.
9. Any dispute over responsibility for debris or the storage of material that results in a delay of the required daily clean up and storage policy will be resolved by Giambrone's Superintendent. Any resulting expense to Giambrone will be back-charged to the responsible Subcontractor(s). Giambrone's Superintendent will establish what portion of the total cost will be charged to each Subcontractor.
10. Adequate lighting will be supplied in all main walkways and general work areas during the normal working day. Subcontractors requiring additional light for their work area must supply it from the temporary power outlet to their work areas.

11. Hazardous conditions such as projecting nails, slippery floors caused by spillage, etc., will be corrected immediately or Giambrone's Superintendent may make the necessary corrections at the Subcontractor's expense.
12. Each Subcontractor will supply and maintain waste containers in its shop, office and other areas where its people generally congregate.
13. Each Subcontractor will supply drinking water, disposable cups and waste containers for used cups for its own people.
14. Subcontractors must supply fire extinguishers, rated at not less than 20BC each place where more than five gallons of flammable or combustible liquid, or five pounds of flammable gas are located on the job site. (This requirement does not apply to the integral fuel tanks on motor vehicles.)
15. Subcontractors will maintain accessibility to all fire extinguishers and hydrants.
16. Subcontractors will provide and maintain special danger signs where their work or equipment requires it, such as "No Smoking," "Flammable," etc.
17. Subcontractors who create environmental hazards, such as asbestos fibers, will post warning signs at the entrances to the area. Subcontractors who must have people working in hazardous areas will furnish the proper personal, protective equipment to such employees.
18. All equipment used by Subcontractors will be maintained in a good state of repair. If, in the judgment of Giambrone such equipment is not in good working order, it will be removed from the job site at the expense of the Subcontractor.
18. Each subcontractor will provide and be responsible for all of their own safety equipment, including but not limited to general perimeter protection and fall protection; Subcontractor creating hazards such as a floor opening, wall opening, or an unsafe stairway, shall provide acceptable, protective railings, guardrail(s), temporary tread(s), hole cover(s), or other protection which meets OSHA and other safety rules and regulations. If a Subcontractor is given permission to remove this protection installed by another Subcontractor, the Subcontractor removing said protection must replace it in the condition found before removal. If the Subcontractor fails to replace this protection before leaving the area in which the protection was removed, the protection may be replaced by other means and a back-charge will be issued to the responsible Subcontractor.
19. Each Subcontractor will be responsible for the safe use, handling and storage of all its gas bottles. Disputes involving bottle ownership will be resolved by Giambrone's Superintendent.
20. The playing of AM/FM radios, cassette or compact disc players is prohibited on the project. Two- way radios used for audio communication are permitted provided Giambrone's Project Superintendent is notified prior to their use.
21. Smoking on the project site or in sensitive areas of the project may be prohibited at the discretion of Giambrone's Project Superintendent

If, in the judgment of Giambrone's Superintendent, proper procedures are not being followed by a Subcontractor, including, but not limited to, compliance by such Subcontractor with all OSHA and other safety rules and regulations applicable to its operations, the Superintendent may stop the work until compliance is achieved.

Each Subcontractor shall submit the following:

1. Safety Program, prior to mobilization of work force.

2. Hazard Communication Program, prior to mobilization of work force.
3. Emergency Plan, i.e. fire/ evacuation, prior to mobilization of work force. Include emergency telephone numbers and contact person.
4. Material Safety Data Sheet(s), prior to arrival of material on site.
5. Chemical/ material listing, prior to arrival of material; update weekly.
6. Update of accident/ injury incidence rate, quarterly - March, June, September and December.
7. Safety meeting minutes with signatures of Prime/Subcontractor, weekly.
8. Copies of all on site inspections, i.e. OSHA, Co. Loss Control Report, etc., within 24 hours of receipt.

Release

I _____ hereby consent and agree to give specimens of my body fluids(*) at a medical facility for transmittal and testing by an approved testing laboratory.

It is my understanding that body fluid(*) specimens will be tested to detect the presence of alcohol and/or other drugs in my body.

In addition to testing at the initial time of application for employment, in the event I am directly involved in a work-related accident or incident, or if there is reason to suspect I use of drugs or alcohol intoxications, I agree and consent to provide specimens of my body fluids (*) for testing to discover the presence of alcohol and/or drugs.

It is agreed that upon request I will be furnished results of tests performed on my body fluids* specimen by the testing laboratory. The testing laboratory is only authorized to confirm to the employer designated above, whether test results and positive or negative in accordance with the predetermined thresholds.

Note: *body fluid tests will normally utilize urine specimens and blood specimens. Tests which entail the withdrawal of blood may be exercised in situations involving an injury accident where I am rendered unconscious and unable to provide a urine specimen, and I agree and consent to such a test under those circumstances.

I acknowledge that I have read, understand and have received a copy of Giambrone's Drug /Alcohol Policy and Program or approved Subcontractor policy. Furthermore, I understand that refusal to submit to the alcohol and drug screening test will constitute voluntary withdrawal of my application of employment; if employed, refusal to submit to such testing will result in the appropriate level of disciplinary action as specified by the Policy and Program.. The presence of alcohol or one or more of those prohibited drugs at or above the defined threshold level will also result in the appropriate level of disciplinary action as specified by the Policy and Program.

SIGNATURE

WITNESS

SOCIAL SECURITY NUMBER _____

DATE _____

Attachment "E" Equal Opportunity Employer

Giambrone Construction, Inc. is an Equal Opportunity Employer M/F/V/H. The Equal Employment Opportunity Clause in Section 202 of the Executive Order 11246, as amended, relative to equal employment opportunity and implementing rules and regulations of the Secretary of Labor are incorporated herein by specific reference.

Giambrone Construction, Inc. provides equal opportunities and bases its employment decisions on sound business reasons, without regard to race, religion, color, national origin, gender, age, disability or any other basis that would be in violation of any applicable ordinance or law.

Attachment ‘F’

Partial Waiver

THE ATTACHED DOCUMENT (PARTIAL WAIVER) MUST BE COMPLETED, SIGNED AND RETURNED WITH YOUR MONTHLY BILLINGS. PAYMENTS CANNOT BE PROCESSED WITHOUT THIS INFORMATION ON FILE.

Attachment "G"

Final Waiver

THE ATTACHED DOCUMENT (FINAL WAIVER) MUST BE COMPLETED, SIGNED AND RETURNED WITH YOUR FINAL BILLING. PAYMENTS CANNOT BE PROCESSED WITHOUT THIS INFORMATION ON FILE.

Attachment "H"

W-9 Form

THE ATTACHED DOCUMENT (W-9) MUST BE COMPLETED, SIGNED AND RETURNED WITH YOUR CONTRACT. PAYMENTS CANNOT BE PROCESSED WITHOUT THIS INFORMATION ON FILE.

IF YOUR W-9 IS ON FILE IN OUR OFFICE BECAUSE YOU HAVE CONDUCTED BUSINESS WITH GCI IN THE PAST, THIS FORM WILL NOT BE ATTACHED.

Attachment ‘T’

Tax Exemption Certificate

PLEASE FORWARD THE ATTACHED CERTIFICATE TO ALL SUPPLIERS. IF GCI HAS NOT RECEIVED THIS DOCUMENT FROM THE OWNERS IT WILL NOT BE ATTACHED. ONCE THE CERTIFICATE IS RECEIVED, IT WILL BE FORWARDED TO YOUR OFFICE VIA FAX.

Attachment “J”

Contractor Affidavit

THE ATTACHED DOCUMENT (CONTRACTOR AFFIDAVIT) MUST BE COMPLETED, SIGNED AND RETURNED WITH YOUR MONTHLY AND FINAL BILLING(S). PAYMENTS CANNOT BE PROCESSED WITHOUT THIS INFORMATION ON FILE.

Attachment “K”

Reference Checks

THE ATTACHED DOCUMENTS (SECTION II, INSTRUCTIONS TO BIDDERS, PAGE 7, ITEM 23 OF THE SPECIFICATIONS) AND (OHGR MEMO) ARE A PART OF THIS CONTRACT. ONCE THE BACKGROUND CHECKS ARE COMPLETED, FORWARD A COPY TO OUR OFFICE. THESE DOCUMENTS WILL BE MAINTAINED WITHIN YOUR CONTRACT FILE.

Attachment “L”

Notice of Commencement

THIS FORM WILL ONLY BE ATTACHED IF OUR OFFICE HAS RECEIVED A COPY FROM THE OWNER. A REQUEST IS FORWARDED TO THE OWNER FOR THIS DOCUMENT AT THE START OF EVERY PROJECT. ONCE THE NOTICE IS RECEIVED A COPY WILL BE FORWARDED TO YOUR OFFICE.

Attachment “M”

Allowances and Alternates

THE FOLLOWING ALLOWANCES HAVE BEEN SELECTED AND INCLUDED IN THIS PROJECT AGREEMENT.

General Bldg Permit Allowance
CM Allowance
Signage Allowance

ALTERNATE #1 HAS BEEN SELECTED FOR THIS PROJECT AND WILL BE INCLUDED IN THE AMOUNT OF THIS AGREEMENT.

Attachment “N”**“Owner Required Forms”**

THE FOLLOWING FORMS ARE ATTACHED FOR YOUR REVIEW AND USE FROM COMMENCEMENT THROUGH FINAL PAYMENT. THESE ARE MEANT TO BE LEFT BLANK, FOR COPYING, BECAUSE THEY WILL BE REQUIRED THROUGHOUT THE PROJECT.

- **Application for Payment**
- **Material Status Report**
- **Certification for Stored Materials – Off Site**
- **Certification for Stored Materials – On Site**
- **RFI Form**
- **Change Estimate Pricing Form**
- **Submittal Cover Sheet**
- **Contact Information Request Form**
- **Certified Payroll Form**

Attachment “O”

“GCI Scope Review Meeting Notes”

IF APPLICABLE, THE MEETING NOTES FROM YOUR SCOPE REVIEW MEETING WITH OUR GCI REPRESENTATIVE, ARE ATTACHED.

Attachment "P"

BWC Drug Free Workplace Program

AS OF JULY 2003, ALL OSFC PROJECTS REQUIRE CONTRACTED PRIME CONTRACTORS AND THEIR SUBCONTRACTORS TO BE ENROLLED IN THE BWC DRUG FREE WORKPLACE PROGRAM OR AN EQUIVALENT PROGRAM. PLEASE REVIEW THE ATTACHED OSFC MEMO.

AS VERIFICATION OF THIS REQUIREMENT YOU WILL NEED TO PROVIDE DOCUMENTATION TO GCI. IF YOU ARE NOT ENROLLED IN THIS PROGRAM, YOU WILL NEED TO MAKE APPLICATION (COPY TO GCI) AND THEN UPON RECEIVING ACCEPTANCE PROVIDE DOCUMENTATION TO OUR OFFICE.

IF YOU NEED A COPY OF THE PROCEDURE GUIDE FOR THE BWC DRUG FREE WORKPLACE PROGRAM, PLEASE CONTACT OUR OFFICE. WE HAVE BOTH (EZ AND STANDARD) GUIDES IN AN EMAIL FILE FORMAT.