

GIAMBRONE MASONRY, INC. PURCHASE ORDER

THIS PURCHASE ORDER (the "Purchase Order") is made as of this ___ day of _____, 200_ by and between Giambrone Masonry, Inc., ("Giambrone") of 10000 Aurora Hudson Road, Hudson, OH 44236 and _____("Vendor") of _____.

THE PROJECT:

THE OWNER:

THE ARCHITECT:

MATERIAL TO BE PROVIDED:

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

PURCHASE ORDER PRICE: _____ (\$ _____) (Including all applicable sales and other taxes)

This is a NOT TO EXCEED VENDOR PURCHASE ORDER. The above or attached pricing is firm and there will be no increase in cost to Giambrone for any reason whatsoever except extras authorized in writing by Giambrone and approved in writing by the Owner for the duration of the Project. The quantities are an estimate and are to be used for reference only, and are not a guarantee to purchase stated quantities. Vendor’s proposal may be attached for reference only but all terms and conditions are governed by the Purchase Order and the contract drawings and specifications applicable to Vendor’s materials and/or supplies and the Contract Documents as defined below.

Giambrone hereby contracts with Vendor as an independent contractor, and upon execution of this Purchase Order Vendor agrees to immediately begin performance of its obligations and agrees to supply all materials and/or supplies along with submittals and/or shop drawings, if applicable, in an expeditious manner so as to cause no delays in the schedule in accordance with the Contract Documents. This Purchase Order consists of this agreement, the terms and conditions set forth herein, Giambrone’s Contract with the Owner or General Contractor, including without limitation, any attachment referenced below, exhibits or addenda attached hereto, and any and all amendments and supplemental documents (together hereinafter referred to as the (“Contract Documents”), all of which are as fully a part of this Purchase Order as if attached hereto or repeated herein. Vendor has had an opportunity to review these documents and has notified Giambrone of any discrepancies, deficiencies and/or ambiguities prior to the execution of this Agreement Giambrone shall pay the Vendor in accordance with the Contract Documents, subject to additions and deductions authorized pursuant to the Contract Documents, the contract sum referenced above (the “Purchase Order Price”). The Purchase Order Price shall include all applicable sales and other taxes and Vendor is responsible for the payment of all applicable taxes in connection with the Vendor’s work. All invoices for this Purchase Order must be received by Giambrone timely each month to be included in the billings for that month.

Vendor 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 Vendor is bound to Giambrone by all terms and conditions of this Purchase Order and, except as otherwise provided herein, by all terms and conditions of the Contract Documents which are incorporated herein and are an integral part of this Agreement. Vendor 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. Vendor shall assume toward Giambrone all obligations and responsibilities which Giambrone assumes toward the Owner in the Contract Documents. Vendor, 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). Vendor 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 Vendor shall be submitted (in writing only) to Giambrone for approval by Owner, and if approved by Owner, shall be Vendor's sole responsibility. Vendor shall be responsible for and pay all additional costs, delays and damages to Giambrone, the Owner or others resulting from any such substitution. 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. In no event shall the Vendor be entitled to greater rights, higher entitlements or more relief against Giambrone than Giambrone is entitled to and/or obtains from the Owner on Vendor’s behalf with respect to the material supplied. Vendor 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. Vendor 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. Vendor shall furnish any separate warranty or guarantee for the Work, or portions thereof, required

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GMI _____

Subcontractor _____

by the Contract Documents This warranty shall be in addition to all other warranties and remedies, expressed or implied, under the Contract Documents and under the law.

Giambrone agrees to pay to Vendor's monthly progress payments, less retention, **if any**, for materials and services provided, in accordance with the terms of the Contract Documents. Vendor expressly agrees that payment to Giambrone from the Owner or General Contractor for Vendor's materials and supplies is a condition precedent to Giambrone's obligation to make payment to Vendor. It is further agreed and understood that the Vendor assumes the risk of Owner's creditworthiness and/or insolvency. This subparagraph shall inure to the benefit of any surety of Giambrone. In addition, Vendor expressly agrees to make no claims against Giambrone or any bond of Giambrone's unless and until Giambrone has received payment for Vendor's materials and/or supplies and has failed to make the approved payment, in accordance with the Contract Documents to the Vendor within 30 days of receipt of such approved payment from the Owner or General Contractor. Approval and payment of Vendor's invoices is specifically agreed not to constitute or imply acceptance by Giambrone or the Owner or General Contractor of any portion of Vendor's materials and supplies. All payments are subject to the receipt of such lien waivers, affidavits, warranties and guarantees required by the Contract Documents and/or Giambrone.

Time is of the essence and all Vendor's materials shall be furnished in sufficient quantities and in sufficient time to ensure the proper and expeditious execution of the work by Giambrone as required by the proposed or updated project schedule. . If Vendor fails to perform in an expeditious manner and contributes to a delay of the project resulting in the imposition of any "liquidated damage" clause by the Owner or General Contractor, the portion of liquidated damages attributable to Vendor's delay shall be paid by Vendor or deducted by Giambrone from any amounts due Vendor. This provision does not preclude any claim Giambrone may have for direct damages under law. In addition to the liquidated damages stipulated in the specifications for the completion of the Project milestone dates by the Owner and any other remedies that Giambrone is entitled to under law or equity, Subcontractor submittal milestone dates will also apply. After ten (10) calendar days from the date of award, liquidated damages will be applied to this Subcontract as a deduct change order in the amount of \$50.00 per day, for each item un-submitted (i.e.: shop drwgs., product data, samples, schedule of values, labor rates, insurance certificates, and certified payroll reports) unless the agreed upon date is extended in writing by Giambrone

Should Vendor fail to satisfy any contractual deficiencies within forty-eight (48) hours of receipt of written notice from Giambrone, then Giambrone, without prejudice to any rights or remedies it may have, shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the costs and expenses thereof to the Vendor, who shall be liable for payment of same, 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 Vendor. If Giambrone's Contract with the Owner or General Contractor is terminated in accordance with the Contract Documents, this Purchase Order shall be thereupon likewise terminated, and compensation to the Vendor shall be made on the same basis as that provided for in Giambrone's contract with the Owner or General Contractor, or in the absence of applicable provisions then on an equitable basis solely on direct material costs incurred to the time of termination. In no event shall Vendor be entitled to anticipated profits.

Vendor shall procure and maintain in force, Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance and all other insurance required to be maintained in the minimum amounts required by the Contract Documents. Giambrone, the Owner, the Architect and the General Contractor, if applicable, shall be named as additional insured's on each of these policies, except for Worker's Compensation and proof of same shall be furnished to Giambrone.

To the fullest extent permitted by law, Vendor shall indemnify, defend and hold harmless Giambrone, the Owner, the Architect, and General Contractor and all of their agents, officers and employees from and against all claims, damages, lawsuits, losses and expenses, including, but not limited to, attorney's fees and court costs, arising out of or resulting from this Purchase Order or the performance, or failure in performance, of Vendor's 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 Vendor 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. The obligations of Vendor shall not extend to claims or losses that are primarily caused by the Architect, or Architect's consultant's performance or failure to perform professional responsibilities. 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.

Giambrone, without nullifying this Purchase Order, may direct Vendor in writing to make changes in the quantity as set forth herein. Adjustment, if any, in the Purchase Order Price or the schedule 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 David Giambrone, President of Giambrone Masonry, Inc. and approved by Owner. It is expressly understood and agreed to by Vendor that no other person has actual or apparent authority to sign Change Orders on behalf of Giambrone.**

This Purchase Order shall be governed by the laws of the State of Ohio. Unless otherwise prohibited by this Purchase Order or barred and/or waived by the Vendor's failure to adhere to notice requirements or other terms and conditions of this Purchase Order. All claims, disputes, and other matters in controversy or question between Giambrone and the Vendor arising out of or related to this Purchase Order 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 Vendor'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 Vendor 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) Vendor shall give Giambrone written notice as required by the Contract Documents of any action, which the Vendor desires Giambrone to take Vendor'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. Vendor 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 Vendor. Vendor 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 Vendor's claim does not involve any issues in which Giambrone has or may have an interest, Giambrone will designate such arbitrator(s) as Vendor requests. If the matter in dispute is required to be submitted to arbitration under the Contract Documents, Vendor shall be bound by the decision of the arbitrators as therein provided.

(C) Any dispute between Vendor 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 Vendor 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 Vendor 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 Vendor, the resolution of a Claim or Dispute between Giambrone and the Vendor 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 the Giambrone and Vendor may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

Any and all actions, causes of actions, suits, arbitrations and/or other proceedings shall be brought in Portage County, Ohio. Vendor agrees that any arbitration hearing shall take place in Portage County, Ohio. Vendor 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. Vendor also agrees to conduct any depositions of Giambrone representatives in Portage County, Ohio, Cuyahoga County, Ohio.

Vendor shall not assign any of the work under this Purchase Order without the prior written consent of Giambrone. Vendor acknowledges, declares, represents and agrees that the individual signing this Purchase Order on behalf of Vendor has full authority to do so and has been authorized by Vendor to sign on behalf of Vendor.

Vendor binds itself to Giambrone for the fulfillment of its obligations under this Purchase Order to the same extent that Giambrone is bound to the Owner, General Contractor, or Construction Manager under Giambrone's contract with the Owner, General Contractor, or Construction Manager for the Project. Giambrone shall have the benefit of all rights, remedies and redress against the Vendor which the Owner, General Contractor, or Construction Manager has against Giambrone. In the case of conflict between this Purchase Order and other Contract Documents, Vendor shall be bound by the more stringent requirement as determined by Giambrone.

This Purchase Order (including any exhibits attached hereto) 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 Purchase Order may only be modified or amended by a written instrument executed by both parties hereto.

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

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

IF WE DO NOT RECEIVE A COPY OF THE FULLY EXECUTED PURCHASE ORDER AGREEMENT, WITHIN 30 DAYS OF ITS ISSUE DATE, GIAMBRONE MASONRY WILL CONSIDER YOUR PURCHASE ORDER TO BE IN FULL FORCE AND IN ACCEPTANCE OF

ALL THE TERMS AND CONDITIONS AS IT IS WRITTEN WITHOUT EXCEPTION.

ATTACHMENTS:

- "B"-List of Contract Drawings and Specifications
- "C"-Minimum Insurance Requirements
- "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)
- "K"-Reference Checks (When Applicable)
- "L"-Notice of Commencement (When Applicable)

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 Masonry, Inc.

GIAMBRONE MASONRY, INC.

VENDOR:

By: _____

By: _____

Name: David Giambrone
Its: President
Date: _____

Name:
Its:
Date: _____

ATTACHMENT "B" LIST OF CONTRACT DRAWINGS AND SPECIFICATIONS

<u>Drwg. and Spec. #</u>	<u>Description</u>	<u>Date</u>
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INDEX OF DRAWINGS

<u>DRAWINGS #</u>	<u>DRAWING TITLE</u>
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ATTACHMENT "C" MINIMUM INSURANCE REQUIREMENTS

GIAMBRONE MASONRY, 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 MASONRY, 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

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GMI _____

Subcontractor _____

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.

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.

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 (CONDUCTED BUSINESS WITH GMI IN THE PAST) THIS FORM WILL NOT BE ATTACHED.

Tax Exemption Certificate

PLEASE FORWARD THE ATTACHED CERTIFICATE TO ALL SUPPLIERS. IF GMI 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.

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.