

(date)

Mr./Ms.

...

RE: Subcontractor Agreement for Services

FILE:

Dear Mr./Ms.:

Enclosed is an electronic copy of the referenced subcontract agreement. Please sign, without any changes, and return with your Certificate of Insurance and your company's W-9 form to the attention of Carolyn Smith in our Syracuse, New York office. No work should proceed and no payments will be made until this subcontract is fully executed by Subcontractor and O'Brien & Gere.

Your certificate of insurance coverage should duplicate the example certificate attached to this letter. O'Brien & Gere will issue you a PO number upon return of a fully executed subcontract agreement.

Please return signed agreement no later than _____, 20__.

Should you have any questions or comments regarding the subcontract agreement, please contact me at (315) 956-6100.

Very truly yours,

O'BRIEN & GERE, INC. OF NORTH AMERICA

Name of Signer

Title of Signer

cc: (Project Manager) - OBG

Carolyn Smith - OBG



SUBCONTRACT

Between

O'BRIEN & GERE, INC. OF NORTH AMERICA
333 W. WASHINGTON ST.
P. O. BOX 4873
SYRACUSE, NEW YORK 13221-4873
Tel (315) 956-6100 / Fax (315) 463-7554

and

(NAME)
(address)
(address)
(tel/fax)

This Agreement ("Subcontract") is made the ____ day of _____, 20____ between O'Brien & Gere, Inc. of North America, a New York Corporation with principal office at 333 W. Washington St., Syracuse, New York 13202 ("Contractor") and the following party ("Subcontractor"):

Legal Name of Subcontractor: ..
Address of Subcontractor: ..
Telephone/Fax: ..

Subcontractor is a: State of _____ corporation.

The parties hereto mutually agree as follows:

The Subcontractor agrees to perform all work contained within this subcontract document for the lump sum price of \$_____.

The parties agree that the work shall be satisfactorily completed ____ calendar days from the date this subcontract was made, or from the ____ day of _____, 20____.

SUBCONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract as of the date first above written.

O'BRIEN & GERE, INC. OF NORTH AMERICA

Witness _____

By: _____
Authorized Representative

Name: _____
(Please Print)

Title: _____

(SUBCONTRACTOR NAME)

Witness _____

By: _____
Authorized Representative

Name: _____
(Please Print)

Title: _____

(SUBCONTRACTOR)

On this _____ day of _____, 20____ before me personally appeared _____, known to me and who declared that he/she is the _____ of _____, the party on behalf of which he/she executed the foregoing instrument.

Notary Public

My commission expires _____ Notary Seal/Stamp:

O'BRIEN & GERE, INC. OF NORTH AMERICA

On this _____ day of _____, 20____ before me personally appeared _____, known to me and who declared that he/she is the _____ of O'Brien & Gere, Inc. of North America, the party on behalf of which he/she executed the foregoing instrument.

Notary Public

My commission expires _____ Notary Seal/Stamp:

GENERAL TERMS AND CONDITIONS - PART I

1.0 **DEFINITION OF WORDS AND TERMS.** Wherever the following or corresponding pronouns are used in this Subcontract, they shall have the meaning given herein.

1.1 **Principal Contract** - A certain contract entered into between the Contractor and the "Owner" (_____), which contract has been examined by the Subcontractor or has been made available for its examination which Principal Contract is expressly incorporated by reference into this Subcontract in its entirety as Exhibit A.

1.2 **Contract Documents** - The following documents shall constitute integral parts of this Subcontract, the whole to be collectively known and referred to as the Subcontract:

- a) This Subcontract and its attachments
- b) Principal Contract attached as Exhibit A
- c) Project Specifications attached as Exhibit B
- d) Subcontract modifications (including without limitation Field Orders and Change Orders)
- e) Subcontract drawings

1.3 **Conflicts between Documents:** In the event of conflict among said documents, the following order of precedence shall apply:

- a) Subcontract modifications
- b) This Subcontract and its attachments other than Exhibits A and B
- c) Principal Contract, attached as Exhibit A
- d) Specifications, attached as Exhibit B
- e) Project Subcontract drawings

Anything mentioned in the Specifications and not shown on the Plans/Drawings, or shown on the Plans/Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of differences between Plans/Drawings and Specifications, Subcontractor shall promptly upon discovery, submit the matter to Contractor who shall promptly make a determination in writing. Any adjustment by the Subcontractor without this determination shall be at Subcontractor's own risk and expense. If the question of differences between requirements also involves cost, the Subcontractor shall always assume it is the most expensive requirement that must be provided, and the cost adjustment will be based on the most expensive of the requirements, unless explicitly directed otherwise by the Contractor.

1.4 **Engineer/Architect** - the term Engineer means the firm of engineers designated in the Principal Contract. The term Architect means the firm of architects designated in the Principal Contract (the term Engineer may also be used to mean Architect). In the event there is no Engineer or Architect designated in the Principal Contract, the Engineer and/or Architect shall be the person or entity designated as such by this Subcontract.

1.5 **Project** - the entire facility or improvement to which the Subcontract relates.

1.6 **Change Order** - a written order from the Contractor to the Subcontractor directing an alteration or modification of the nature, scope or the type of the work.

1.7 **Specifications** - the directions, requirements, and standards of material or performance given under any of the headings of General Specifications, Detailed Specifications or Material Specifications, information to bidder, pay items, contract drawings and all addendum to any of the foregoing.

1.8 **Shop Drawings, Record Drawings, Working Drawings, Construction Drawings** - Drawings prepared, or caused to be prepared by the Subcontractor, including standard or stock equipment drawings necessary to the performance of the work on the Principal Contract or as may be required by the Engineer to be submitted for approval.

2.0 **PAYMENTS, RETAINAGE AND PAYMENT OF RETAINAGE.** The Contractor shall make periodic progress payments to the Subcontractor within 15 days of receipt of periodic progress payments by the Contractor from the Owner. Such payments shall be subsequent to, and contingent upon, said receipt from Owner and shall reflect the value of work completed by the Subcontractor as determined by the Contractor, less:

- a) a retainage of 10%.
- b) the aggregate of previous payments, and
- c) such other offsets or backcharges as may be permitted by this Subcontract.

2.1 **Receipt of Payment:** The Subcontractor recognizes that the Contractor has no control over the timing of receipt of payment from the Owner, and Subcontractor agrees that Contractor's obligation to pay is contingent upon Contractor's receipt of payment from Owner and that Subcontractor will make no claim against the Contractor should the Owner fail to pay the Contractor within the time for payment set forth in the Principal Contract.

2.2 **Application for Payment:** The Subcontractor shall submit to the Contractor a certified application for payment, referencing the purchase order number assigned by Contractor with respect to this Subcontract (upon a form of the Contractor, if so requested) on the 25th day of each calendar month, setting forth the amount of work estimated to have been performed by the Subcontractor under this Subcontract and the value thereof, and before payment shall be made by the Contractor, the Subcontractor shall submit to the Contractor satisfactory evidence of the payment by it of all bills for materials, wages, expenses including taxes and benefits and other indebtedness incurred by him in the carrying on of the work. Subcontractor shall submit a Conditional Waiver and Release Upon Payment (Exhibit F-1) with each application for payment.

Applications for payment can be sent electronically to accounts.payable@obg.com or via regular mail to PO Box 4873, Syracuse, NY 13221-4873, Attn: Purchasing.

2.3 **Liens and Claims:** In the event there are any unpaid material bills or indebtedness for the labor or other expenses or any dispute as to the amount of work estimated to have been performed by the Subcontractor, the Contractor may, at its discretion (but not in limitation of any other provision herein) withhold from any payment an amount sufficient to pay any such indebtedness or expenses. Further, if required by the Contractor, the Subcontractor shall give the Contractor good and sufficient evidence that the premises and Project are free from liens and claims chargeable to said Subcontractor, and/or notification if at any time there shall be any lien or claim or conditional contract for which, if established, the Contractor, Owner or the Project may be made liable and which is chargeable to the Subcontractor.

2.3.1 **Defective Work:** In the event the Subcontractor fails to remedy any defects in the work, the Contractor shall have the right to retain out of any payments then due, or thereafter to become due, an amount sufficient to correct the work. In the event the Subcontractor liens the Project to a third party for the amount withheld for the defective work and Contractor is required to discharge said lien, the Subcontractor will be liable to the Contractor for all costs related to the discharge activity, including without limitation, attorneys' fees, court and costs, bond premiums, and any other expenses incurred in discharging said lien.

2.4 **Supporting Payment Documentation for Unit Price or Time and Material Contracts:** It is further understood and agreed that if this Subcontract is a Unit Price Contract or a Time and Materials Contract,

the Subcontractor shall furnish the Contractor with copies of certified payrolls, affidavits, material invoices and orders and any and all data as may be required by the Contractor prior to receiving any payments under this Subcontract. Contractor will have the right to review Subcontractor records to verify accuracy of invoices, and may request and Subcontractor shall supply reasonable supporting documentation for invoices. Subcontractor shall obtain and retain receipts substantiating expenditures of \$25.00 or more (including cost of personal meals and tips). Subcontractor shall also provide that the same audit rights shall be granted to Contractor in any sub-subcontracts entered into by Subcontractor with respect to services provided under this Subcontract.

2.5 Unit Cost and Time and Materials Quantities: If the work performed by the Subcontractor is on a so-called unit cost or a time and materials basis, the quantities of work performed as shown by the Subcontractor's certificate required by Section 2.4 above, must agree with the estimate of the Contractor as to the quantities of work performed. Further, no payment shall be made to Subcontractor until any disagreement regarding such quantities is resolved to the satisfaction of the Contractor.

2.6 Final Payment: Subcontractor shall submit a Final Waiver and Release (Exhibit F-2) with its application for final payment. The payment and acceptance of the final payment and full contract price of the work, as above specified, shall constitute a complete release and discharge of the Contractor from all claims and of all liability to the Subcontractor for all things done or furnished in connection with this work and every act and neglect of the Contractor and others relating to or arising out of the work. No payment, final or otherwise, shall operate to release the Subcontractor or his sureties from any obligation under this Subcontract or for the performance, labor, material, completion and lien bond agreed to be furnished hereunder.

3.0 CONTRACTOR'S RIGHT TO WITHHOLD PAYMENTS. Contractor may withhold from the Subcontractor such portions of any approved payments to him as the Contractor may reasonably judge necessary to:

- a) Protect the Contractor from loss due to work not performed according to the Subcontract.
- b) Assure the payment of just claims then due or unpaid for labor and materials relating to the work.
- c) Protect the Contractor from loss due to injuries to persons or damage to the work or property of any person caused by acts of the Subcontractor.

3.1 Payment Withholdings: The Contractor shall have the right as agent for the Subcontractor to pay or apply moneys so withheld as the Contractor may deem proper to secure such protection or satisfy such claims. Such payments or applications shall be deemed made for the account of the Subcontractor.

4.0 BACKCHARGE PROCEDURE. Definition of Backcharge - For the purpose of this Subcontract, a backcharge is defined as a billing to Subcontractor for costs incurred by Contractor:

- a) To provide, correct, repair or replace permanent materials and equipment set forth in Subcontractor's Scope of Work;
- b) To repair existing Project facilities damaged by Subcontractor's construction activities;
- c) To provide construction materials, equipment, utilities and other services, including the unloading and storing of materials and equipment, set forth in Subcontractor's Scope of Work;
- d) To provide insurance coverages required by this Subcontract which the Subcontractor has failed to provide; and/or
- e) As a result of safety violations caused by the Subcontractor or Subcontractor's lack of compliance with health & safety requirements.

4.1 Backcharge Notification - Upon identification of a backcharge condition, Contractor's representative or designee will immediately notify Subcontractor's designated on-site representative, or if no on-site representative is present, Subcontractor's home office representative. Verbal notification will be

confirmed in writing to Subcontractor within ten working days of the verbal notification. Contractor will request Subcontractor's suggested method of handling the backcharge condition and Subcontractor will first be given the opportunity to inspect and correct the condition (when possible) within a reasonable time period as determined by Contractor's representative, and as agreed upon by Subcontractor.

- 4.2 **Method of Correction** - Contractor's representative shall evaluate all recommended methods of correction, with Project schedule a priority consideration, and will select the method most economical and advantageous to the Project. Contractor's representative or designee will notify Subcontractor in writing of his selected method of correction.
- 4.3 **Backcharge Rates** - In the event Contractor's representative determines that the most advantageous method of correction is for Contractor's personnel to perform the required work or have the work done by others on behalf of Contractor, the following rates shall apply:
- a) Direct labor costs, plus prevailing overhead and indirect markups.
 - b) Actual cost of material and supplies, plus 10%.
 - c) Construction equipment at 95% of current published AED rates, plus 35% for insurance, fuel, oil and grease. Equipment costs shall be based on actual hours equipment is in use and in transit. Hourly rates shall be computed as 1/175 of the equipment monthly rental rate.
 - d) Design engineering cost, plus 25%.
 - e) Actual cost charged to Contractor by third parties to perform the required work, plus 10%.
 - f) Actual cost charged to Contractor to procure insurance coverages required to be provided by Subcontractor pursuant to this Subcontract which Subcontractor failed to provide.
- 4.4 **Backcharge Estimate** - Contractor shall prepare an estimate of charges and provide same to the Subcontractor, as soon as possible after the identification of a backcharge condition. The absence of an estimate of charges shall not prevent Subcontractor from commencing the required work.
- 4.5 **Subcontract Backcharge Agreement** - As time permits, an attempt will be made to execute a Subcontract Backcharge Agreement prior to the start of required work. If time does not permit, the work shall commence without an executed Subcontract Backcharge Agreement. If time does not permit the execution of a Subcontract Backcharge Agreement prior to the start of required work, such Subcontract Backcharge Agreement shall be executed upon completion of the work.
- 4.6 **Nonacceptance of Backcharge** - Failure of Subcontractor to accept a backcharge shall not constitute indemnity of Subcontractor nor shall the backcharge be voided as a result of Subcontractor's failure to accept. In the settlement of backcharges, Contractor's decision shall be final. Contractor assumes no liability whatsoever for work completed by Subcontractor as a result of a backcharge. Further, Contractor reserves all rights pursuant to the conditions of this Subcontract to claim any damages whatsoever created by Subcontractor's work conducted as a result of a backcharge.
- 4.7 **Final Settlement of Backcharge** - Backcharges shall be deducted from the Subcontractor's latest monthly invoice after completion of required work.
- 4.8 **Release of Retention** - Contractor's release of retention will be withheld until all backcharges have been resolved to the satisfaction of Contractor.
- 5.0 **RISK OF LOSS.** The risk of loss to the work shall not pass to the Contractor or Owner until the Subcontractor actually completes the work and such work is accepted by the Contractor in writing.
- 6.0 **WARRANTIES.** The Subcontractor warrants that the work will be of merchantable quality will be fit for the particular purposes intended and will conform to all requirements as set forth in the Subcontract. All warranties of the Subcontractor whether express or implied shall inure to the benefit of the Contractor and

shall further more expressly inure to the benefit of the Owner, and/or their successors. The warranties offered by the Subcontractor are outlined in Exhibit C.

6.1 Other Warranties: Subcontractor warrants and represents that all costs of compliance, including but not limited to, materials, equipment, training, qualified supervision and administration, and safety compliance have been considered and are included in the consideration set forth in this Subcontract.

6.2 Warranty Against Encumbrances: The Subcontractor warrants that he shall convey good title to any material or equipment becoming a part of the work to the Contractor and/or Owner and that at the time of delivery said material or equipment will be free from any security interest or other lien or encumbrance.

7.0 ALL WORK SUBJECT TO THE CONTROL OF ENGINEER. The Subcontractor shall perform the work to the satisfaction of the Engineer and shall abide by all orders, directions and requirements of the Engineer. The Engineer will interpret the Contract Documents, any supplemental agreements and Change Orders, and will decide all questions in connection with the Work. The Engineer will determine the quality and acceptability of all parts of the work.

7.1 Additional Instructions: The Engineer may from time to time issue additional instructions to the Subcontractor as may be necessary to amplify, augment or clarify the Subcontract.

7.2 Inspections and Approvals: No inspection or approval by the Contractor, the Owner, the Engineer or any of their employees, nor any order or certification by the Engineer, nor payment for, nor acceptance of any part of the work by the Contractor or the Owner or the Engineer, or any agents of them shall operate as a waiver of any provisions of this Subcontract or of any right to damages herein provided or of any power herein reserved.

7.3 Waivers: No waiver of any breach of this Subcontract shall be construed to be a waiver of any other or subsequent breach. All remedies in the Subcontract shall be construed as being cumulative in addition to any other remedy herein contained.

7.4 Legal Remedies: The Contractor shall have all legal and other remedies in recourse which he would in any case have.

8.0 MATERIALS AND WORKMANSHIP - GENERAL REQUIREMENTS. All workmanship, materials, equipment and appliances relating to or incorporated into the work shall comply in all respects with the Subcontract. All materials furnished or incorporated in the work shall be new, unused and of the quality and characteristic specified. If the quality and characteristic of material are not specifically set forth in the Subcontract, the material used shall be that customarily used in the first class work of a similar nature and character.

9.0 SAFETY. Subcontractor acknowledges that its agreement to conduct all of its activities and operations in compliance with the most stringent among the Owner's, Contractor's and Subcontractor's Health and Safety procedures and requirements, and OSHA regulations forms an essential consideration for this Subcontract. Manuals and forms will be provided by Contractor's Site Safety Manager. Expenses incurred by the Contractor or the Owner as a result of safety violations caused by the Subcontractor or Subcontractor's failure to comply with health & safety requirements, may result in backcharges to the Subcontractor.

9.1 Safety Warranties: Subcontractor warrants and represents that it has thoroughly reviewed both the Contract Documents and the various health and safety requirements applicable to its work.

9.2 Housekeeping: Cleanup of work areas should be done on a daily ongoing basis. Subcontractor will comply with good housekeeping practices in their work areas to the satisfaction of the Contractor's Construction Manager. Should Subcontractor fail, at Subcontractor's expense, to furnish the necessary labor, equipment, and materials required to cleanup his/her work area as directed by the Construction

Manager, backcharges to the Subcontractor will be imposed in the amount required to perform such cleanup.

9.3 Accident Reporting: Subcontractor shall immediately notify Contractor of any injury to persons or damage to property made to or by Subcontractor, or any of its subcontractors, and Subcontractor shall provide Contractor with a written report of such injury and/or property damage within five (5) days of the incident giving rise to the same.

10.0 TERMINATION OF AGREEMENT. Any misrepresentation or failure of Subcontractor to comply, in whole, or in part, with each of the provisions of this Subcontract shall be sufficient cause for Contractor to immediately terminate this Subcontract without prejudice to any other rights or remedies of Contractor pursuant to the terms in Article 19. Notwithstanding the foregoing or anything to the contrary in this Agreement, including without limitation Article 19 and the notice provisions therein, Subcontractor's violation of any of the health & safety requirements of this Agreement shall be cause for immediate termination of this Agreement by Contractor without notice and without prejudice to any other rights or remedies of Contractor.

11.0 SCHEDULE OF THE WORK. The Subcontractor is responsible for the sequencing, scheduling and coordinating of the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. Within two weeks after signing the Subcontract, unless otherwise extended by the Contractor at the time of the signing of the Subcontract, the Subcontractor shall prepare and submit to the Contractor a preliminary schedule for accomplishing the Work based upon the completion time stated in the Subcontract. A fully complete progress schedule for accomplishing the work must be submitted in like manner no later than 60 days after signing the Subcontract. No progress payments will be payable to the Subcontractor until after it has submitted a preliminary schedule which is acceptable to the Contractor. Neither the second progress payment nor any subsequent payment shall be payable to the Subcontractor until it has submitted a fully complete progress schedule.

12.0 SAMPLES, TESTS AND INSPECTIONS. All materials, equipment and workmanship shall be subject to inspection, examination and tests by the Contractor and/or the Engineer or persons designated by either of them at any and all times during performance of the work and at any places where such work on the Project is performed.

12.1 Submittal of Test and/or Samples: If required by the Specifications or if requested by the Contractor, the Subcontractor shall submit to the Contractor and/or Engineer for examination, testing and approval, typical samples or models of the material or equipment. Samples or models shall be submitted in accordance with the review procedure set forth in Part II, Article 6.0.

12.2 Laboratory Test: All laboratory testing shall be in accordance with [Sections _____ of] the Principal Contract included as Exhibit A of this Subcontract [and as provided for by _____].

12.3 Quality Assurance: The Subcontractor's quality control program in conjunction with the Contractor's and Owner's QC/QA Programs will be adhered to as outlined in Exhibit D.

13.0 REPRESENTATIONS OF SUBCONTRACTOR. Without limiting the effect of any other warranties or representations, express or implied, relating to the Subcontract, the Subcontractor warrants and represents that:

a) Subcontractor is familiar with all Federal, State, County and municipal laws, ordinances, regulations and codes pertinent to the performance of the work herein specified, including any special acts relating to the Project, and Subcontractor agrees to perform the work in accordance therewith.

- b) Subcontractor has carefully examined all of the Documents which comprise the Subcontract and the site of the Project and is familiar with all aspects of the Project as they relate to the work herein specified, including any subsoil or subsurface conditions.
- c) Subcontractor is financially solvent and experienced in and competent to perform the work.
- d) Subcontractor agrees that with respect to its work hereunder, Subcontractor is solely responsible for compliance with all applicable laws, rules, regulations and ordinances applying to safety, including the Occupational Safety & Health Act (OSHA). The Subcontractor shall further assure itself that any tools, equipment, scaffolding or other items which may be loaned or rented to it by the Contractor or any others are in good order and in compliance with OSHA standards and any other laws designed to protect the safety of persons at the job site. The Subcontractor will report all personnel injuries to the Contractor promptly. The Subcontractor agrees to indemnify and hold the Contractor harmless with respect to any penalties or fines and/or legal costs for violations thereof or for any injuries or death resulting from noncompliance.

14.0 **PATENTS.** The Subcontractor shall indemnify, keep and save harmless the Contractor and the Owner, their successors, assigns, licensees and other transferees from all costs, damages, liabilities, judgments and expenses which may in any way arise against the Contractor or Owner, their successors, assigns, licensees and other transferees (herein referred to as the "Protected Parties") because of the use of any patented material, equipment or process furnished or used in or in connection with the use of or because of the use of patented designs supplied by the Subcontractor.

14.1 **Patent Claims:** If any claim, suit or action at law or in equity of any kind involving any such patent is brought against any of the Protected Parties, the Contractor may retain from any moneys due or to become due, an amount considered sufficient by the Contractor to protect itself and such other of the Protected Parties against loss including attorneys' fees and costs, until such action is settled and satisfactory evidence to that effect has been supplied to the Contractor.

14.2 **Patent Legal Action and Cost:** Subcontractor undertakes and agrees to defend at Subcontractor's expense all suits, actions or proceedings in which any of the Protected Parties are made defendants for actual or alleged infringement of any U.S. or foreign letters patent resulting from the work performed by Subcontractor hereunder and further agrees to pay and discharge any and all judgments and decrees which may be rendered in any such suit, action, or proceedings against such defendants therein.

15.0 **GENERAL INDEMNIFICATION.** The Subcontractor shall fully protect, defend, indemnify and save harmless the Contractor and the Owner against all liability, judgments, damages, cost and expense, including legal fees and expenses, arising from claims relating to the work performed hereunder because of the failure, omission, negligence or willful misconduct of the Subcontractor or any of its subcontractors.

15.1 **Limitations on Indemnity:** To the extent any state or other applicable law may prohibit any application of all or any part of this indemnity obligation, it is the intent of the parties that this clause is severable, and that the clause be construed to impose the indemnity obligation in all circumstances, applications and situations to the fullest extent permitted by law.

15.2 In claims against any person or entity indemnified under this Subcontract brought by an employee of the Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Subcontract shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

16.0 CHANGES AND EXTENSIONS OF TIME.

- 16.1 **Contractor's Right to Order Changes:** Changes in the Scope of Work within the general scope of the Contract Documents, consisting of additions, deletions, revisions or any combination thereof, may be ordered by the Contractor without invalidating this Subcontract. Such changes shall be communicated by Change Order or by Field Order Directive. The Subcontractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the following terms and conditions.
- 16.2 **Definition of Change Order:** "Change Order" shall mean a written order to the Subcontractor executed by the Contractor, issued after execution of this Subcontract, authorizing and directing a change in the Scope of Work or an adjustment in the Contract Price, the Contract Time, Scope of the Schedule of Construction or the Scheduled Completion Date, or any combination thereof. The Contract Price, the Contract Time, and the Scheduled Completion Date may be amended only by Change Order.
- 16.3 **Determining Changes in Contract Price:** All changes ordered by the Contractor shall be priced using one of three methods: Lump Sum, Unit Price or Time & Material. The preference for pricing all Change Orders is Lump Sum; however, the following shall apply for each type of change.
- 16.3.1 For Lump Sum changes the Subcontractor when providing a cost proposal for any change ordered by the Contractor, directly or indirectly, shall provide such a cost proposal on a Recommendation for Contract Change (RCC) form, as provided herein as Exhibit G. For any cost proposal to be considered by the Contractor, the RCC must be submitted within 10 days of the event causing the RCC. Approved RCCs will be converted to Subcontract Change Orders (Exhibit H), signed by an authorized representative of the Contractor. Lump Sum changes shall include a maximum allowance of ____% for total Overhead and Profit, including lower tier Subcontractors.
- 16.3.2 If so provided in this Subcontract, the Contractor may instruct the Subcontractor that pricing will be in accordance with the Unit Prices provided herein. The Subcontractor shall submit an RCC with the estimated quantities that have been added or deleted, extended by the appropriate Unit Price. No additional changes will be approved under a Unit Price Change Order.
- 16.3.3 In the event the Contractor elects to perform any changes on a Time & Material basis, or if the parties cannot agree on the value of a Lump Sum change, the Contractor may direct the work to be performed on a Field Order Directive (Exhibit I). Labor will be in accordance with Exhibit J of this Subcontract. Material will be at cost supported by appropriate receipts and a markup of 5% will be allowed on material. Subcontractor-owned tool and equipment rental rates, including all third party and lower tier Subcontractor/supplier rates, shall be reimbursed at a cost not to exceed 80% of the latest editions of the MCAA Tool and Equipment Rental Survey and/or the AED Green Book of National averaged rates, which includes, but is not limited to, all costs for fuel, or other energy costs to operate a tool or machine, all transportation costs, cost of hook-up of other necessary preparatory work, consumables, normal and extraordinary wear and tear, depreciation, maintenance, lubrication, storage, Subcontractor's Overhead and Profit. Subcontractor-owned automobiles and pick-up trucks are to be furnished as part of the Subcontractor's Overhead and Profit mark ups and shall not be reimbursed as a rental expense. If Contractor directs Subcontractor to implement a change on a Time & Material basis, Subcontractor is required to provide complete Time & Material sheets describing the labor, material, and equipment used on a daily basis. These sheets will be reviewed and signed off by the Contractor on a daily basis. Contractor will not accept Time & Material work claims if daily sheets are not provided to and signed off by Contractor.

- 16.4 **Continuing Duty to Perform Work and Make Payment:** In the event the parties are unable to agree on the terms of a Change Order, then the Subcontractor shall continue to diligently perform the Work and shall keep thorough records of the costs described in the preceding paragraph, which records it shall make available to the Contractor upon request.
- 16.5 **Changes in Unit Prices:** If unit prices are provided in this Subcontract, and if the quantities contemplated are changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed will cause substantial inequity to the Contractor or to the Subcontractor, the applicable unit prices shall be equitably adjusted.
- 16.6 **Minor Changes:** The Contractor shall have authority to order minor changes in the Scope of Work not involving change in the Contract Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such minor changes shall be made by written field order (each, a "Field Order"), and the Subcontractor shall promptly carry out written Field Orders.
- 16.7 **Effect of Executed Change Order:** The execution of a Change Order by the Subcontractor shall constitute conclusive evidence of the Subcontractor's agreement to the ordered changes in the Scope of Work, this Subcontract as thus amended, and the Contract Price, the Contract Time, and the Scheduled Completion Date, as thus amended. The Subcontractor, by executing the Change Order, waives and forever releases any claim against the Contractor for additional time or compensation for matters relating to, arising out of, or resulting from the Scope of Work included within or affected by the executed Change Order.
- 16.8 **Fiduciary Relationship:** Subcontractor recognizes and accepts a fiduciary relationship of trust and confidence established between Subcontractor and Contractor by this Subcontract and agrees that it shall at all times in good faith use its best efforts to advance the Owner's interest and agrees to perform the Scope of Work in the best professional manner.

17.0 CLAIMS BY SUBCONTRACTOR

- 17.1 **Claims for Increase in Contract Price:** If the Subcontractor claims that any instructions given to him by the Contractor, by the drawings or otherwise, involve extra Work not covered by the Subcontract, then, except in emergencies endangering life or property, he shall give the Contractor written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than 10 days after the receipt of such instructions. Should it not be clear to the Subcontractor that a change will involve extra Work, written notice given within 10 days that the change may involve extra Work will be considered sufficient notice. If the Contractor agrees that the Work involved in such instruction was extra work, a change order shall be issued as provided in Section 16.3 of these General Conditions, and the additional compensation to be paid therefore shall be determined by one of the three methods provided in said Section 16.3, selected by the Contractor. Except as otherwise specifically provided, no claims for extra Work shall be allowed unless the notice required by this Section is given by the Subcontractor within the time allowed and unless such Work is performed pursuant to the written order of the Contractor as provided in said Section 16.3. The Contractor's written order shall designate which of the three methods for computing charges and credits set forth in Section 16.3. However, if the Contractor's Representative determines that the claim for increase to the Contract Price is not warranted, the Contractor's Representative will render a decision in writing and the Subcontractor shall proceed as required pursuant to Section 17.4. In the event the Subcontractor disagrees with the decision of Contractor, the Subcontractor can pursue relief pursuant to Article 26 of this Subcontract.
- 17.2 **Limit of Contractor's Liability for Increased Costs:** In connection with any claim by Subcontractor against Contractor for compensation in excess of the Contract Price, any liability of Contractor for

Subcontractor cost (a) shall be strictly limited to direct costs reasonably incurred by Subcontractor, (b) shall in no event whatsoever include, indirect, consequential, impact or other costs, expenses or damages of Subcontractor or its lower-tier subcontractor. Claims shall be calculated in accordance with Section 16.3. Contractor shall not be liable to third parties, including lower-tier subcontractors, for acts, omissions, events, or conditions for which Contractor would not be liable for to Subcontractor under the terms of this Subcontract. Additionally, as a condition precedent to Contractor's liability to Subcontractor for any loss or damage resulting from claims of third-parties, including lower tier Subcontractors, such third parties must have complied with all conditions contained in their agreements with Subcontractor and such lower tier Subcontractor's claims must have been submitted to Contractor by Subcontractor in strict compliance with all the requirements of Section 17.1.

- 17.3 **Documentation in Support of Extras:** Upon discovering an event or condition forming the basis of a claim for an increase in the Contract Price or an extension of the Contract Time, Subcontractor shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim. Subcontractor shall provide, and continue to provide, to Contractor all such documentation, including cost and time records, as and when Contractor may request so that Contractor may evaluate Subcontractor's claim.
- 17.4 **Duty to Proceed with Work:** Pending resolution of any extras by Subcontractor for an extension of the Contract Time or an increase in the Contract Price, Subcontractor shall diligently proceed with performance of this Subcontract, and Contractor shall continue to make payments to Subcontractor in accordance with this Subcontract.
- 17.5 **Extras Resolved by Change Order:** The resolution of any claim under this Article 17 shall be reflected by a Change Order executed by Contractor and Subcontractor.
- 17.6 **Differing Site Conditions:** A claim for an adjustment in the Contract Price and/or schedule may be allowed for concealed or unknown conditions encountered in the performance of the work which exist below the surface of the ground or in an existing structure and are at variance with the conditions indicated by the Contract Documents and not reasonably discoverable by the Subcontractor's diligent inspections as required herein, or are of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in the Subcontractor's work of the character provided for in the Contract Documents. If Subcontractor believes any such differing site condition exists, then Subcontractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any work in connection therewith (except in emergencies endangering life or property), notify the Contractor in writing about the condition. Any claim by Subcontractor for a Contract Price or Schedule adjustment shall be made within 10 days of notice of the condition. Subcontractor shall not further disturb such condition or perform any work in connection therewith (except as aforesaid) until resolution of such claim is made in accordance with Section 17.5. The Subcontractor's failure to properly perform its duties and obligations set forth shall not serve as the basis for any change in the Contract Price or Schedule.
- 18.0 **EXTENSION OF TIME AND ACCELERATION.** It is understood that Time is of the Essence on this Subcontract. The Subcontractor shall not cause delays; however, if delays occur, the Subcontractor agrees as follows:
- 18.1 **Delays Caused by the Subcontractor:** If the Subcontractor fails to complete any portion of the Work within the time fixed by the Subcontract for the completion of the same, the Subcontractor shall be liable to the Contractor for the amount set forth in the Project Specifications (Exhibit B) not as a penalty, but as fixed, agreed upon liquidated damages for delay, until the Work is substantially or finally completed, as the case may be. In addition to damages for delay, the Subcontractor will also be liable for any and all actual damages sustained as a result of any other breach of the Subcontract other than by delay, including abandonment of the Subcontract. If liquidated damages are not so fixed in the Project

Specifications, the Subcontractor shall be liable for any and all actual damages sustained as a result of delay.

18.2 Delays Caused by Others: If the Subcontractor is unreasonably delayed at any time in the progress of the Work by any act, omission, or neglect of the Contractor, its agents or employees which are beyond their control, or if the Subcontractor is delayed at any time in the progress of the Work by any act, omission or neglect of any separate Subcontractor engaged by the Contractor, or by strikes, fires, unusual delays in transportation, abnormal adverse weather conditions or unavoidable casualties not caused by the Subcontractor, or by any other cause beyond the Subcontractor's control, the time for Substantial Completion or Final Completion, as applicable, shall be extended for the length of time that the Substantial Completion or Final Completion of the Work was actually delayed thereby and the Subcontractor shall not be charged with liquidated or actual damages for the delay during the period of such extension nor shall the Subcontractor be due compensation for extended general conditions expense, other expense related to the delay, overhead, or profit for the period covered by such extension unless the delay is caused by Contractor or the Owner, and in no part by Subcontractor. In the event a CPM schedule was required by this Subcontract, no extension shall be granted unless the Subcontractor demonstrates a delay in the Substantial Completion or Final Completion of the Work, as applicable, by showing a delay on the critical path of the CPM schedule.

18.3 Right to Accelerate: If the Contractor elects to direct the Subcontractor to accelerate the work at no additional cost to the Contractor to eliminate delays pursuant to Section 18.1, the Subcontractor shall immediately implement the acceleration. Acceleration can be in the form of additional manpower, overtime and/or additional shift work or a combination thereof. If the Subcontractor refuses to immediately proceed with the directed acceleration, the Subcontractor will be considered in breach of contract and subject to termination as stipulated in Article 19.

19.0 CONTRACTOR'S RIGHT TO TERMINATE FOR CAUSE. If the Subcontractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the Contractor may terminate the Subcontract. If the Subcontractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to Subcontractors or suppliers of material or labor, or persistently disregard laws, ordinances or the written instructions of the Contractor, or otherwise be guilty of a substantial violation of any provision of this Subcontract, then the Contractor, may terminate the Subcontract.

Prior to termination of the Subcontract, the Contractor shall give the Subcontractor and his surety ten (10) calendar day's written notice, during which the Subcontractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the Contractor within said ten (10) days, the Contractor may rescind its notice of termination. If it does not, the termination for cause shall become effective at the end of the ten day (10) notice period. In the alternative, the Contractor may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Subcontractor and/or its surety that the causes of termination will be remedied in a time and manner which the Contractor finds acceptable. If at any time more than ten (10) days after the notice of termination, the Contractor determines that Subcontractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Contractor may immediately terminate the Subcontract for cause by giving written notice to the Subcontractor and its surety. In no event shall termination for cause terminate the obligations of the Subcontractor's surety on its payment and performance bonds.

Notice of termination, whether initial or given after a period of postponement, may be served upon the Subcontractor and the surety by mail or any other means at their last known places of business, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such

officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

Upon termination of the Subcontract, the Contractor shall take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Subcontractor shall not be entitled to receive any further payment. If the expense of finishing the Work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the Subcontract price, the Subcontractor shall pay the difference to the Contractor, together with any other expenses of terminating the Subcontract and having it completed by others.

If it should be judicially determined that the Contractor improperly terminated this Subcontract for cause, then the termination shall be deemed to be a termination for the convenience of the Contractor.

Termination of the Subcontract under this section is without prejudice to any other right or remedy of the Contractor.

19.1 Termination By Contractor For Convenience: Contractor may terminate this Subcontract at any time without cause, in whole or in part, upon giving the Subcontractor notice of such termination. Upon such termination, the Subcontractor shall immediately cease Work and remove from the Project site all of its labor forces and such of its materials as Owner and/or Contractor elect not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Subcontractor shall take such steps as Owner and/or Contractor may require to assign the Subcontractor's interest in all subcontracts and purchase orders designated by Owner and/or Contractor. After all such steps have been taken to Contractor's satisfaction, the Subcontractor shall receive as full compensation for termination and assignment the following:

- a) All amounts then otherwise due under the terms of this Subcontract,
- b) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
- c) Reasonable compensation for the actual cost of demobilization incurred by the Subcontractor as a direct result of such termination. Subcontractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, Contractor and/or Owner shall have no further obligations to Subcontractor of any nature.

In no event shall termination for the convenience of the Subcontractor by the Contractor terminate the obligations of the Subcontractor's surety on its payment and performance bonds.

20.0 INSURANCE. The Subcontractor agrees to carry, at his own expense, the insurance as shown in Exhibit E.

20.1 Cancellations or Changes to Insurance: The said insurance will not be canceled or changed without at least 30 days' written notice to the Contractor. In the event of the failure of the Subcontractor to furnish and maintain such insurance, the Contractor shall have the right to take out and maintain the said insurance for and in the name of the Subcontractor and the Subcontractor agrees to pay the cost thereof and to furnish all necessary information to permit the Contractor to take out and maintain such insurance for the account of the Subcontractor.

20.2 Certificate of Insurance: At least 10 days prior to commencement of work, Subcontractor will submit insurance certificate for approval (or at time of Subcontract signing, whichever is earlier). If certificate is not in compliance with requirements, Subcontractor must submit a revised certificate that complies with all insurance requirements of this Subcontract prior to commencement of work. Subcontractor

will indemnify and hold Contractor harmless from and against any and all liability, costs, expenses, claims, fines, penalties, damages or losses of any kind, that result from Subcontractor's failure to obtain and maintain insurance in accordance with this Article 20.0.

- 20.3 **Insurance in Lieu of Warranties:** Compliance by the Subcontractor with the foregoing requirements to carry insurance and furnish certificates shall not relieve the Subcontractor from liability under Article 9 hereof.
- 21.0 **GOVERNING LAW.** This Subcontract shall be governed by the laws of the State of New York. The place of trial of any action between the Contractor and the Subcontractor shall be in the State of New York. Subcontractor's warranties will be governed by the laws of the State of New York (see the accepted warranties in Exhibit C).
- 22.0 **WAIVER AND RELEASE OF LIENS.** Subcontractor agrees that he will duly execute and deliver to Contractor for the benefit of Contractor and Owner a waiver and release of all liens against the Project, the Owner and Contractor, in such form as the Contractor requests (sample forms included as Exhibits F-1 and F-2), to the extent Subcontractor has been paid or is about to be paid for any part of the work hereunder and such waiver and release may be required as a simultaneous condition to the right to receive payment hereunder.
- 22.1 **Subtier Subcontractors and Materialmen Waivers and Release of Liens:** Subcontractor agrees to insert an identical requirement in any subcontract he may enter into with subcontractors or materialmen as permitted herein. Subcontractor agrees to deliver to Contractor for the benefit of Contractor and Owner waivers and releases of all liens from all sub-subcontractors. Said waivers and releases of liens are to be included with Subcontractor's request for payment. Contractor's receipt of such waivers and releases may be required as a simultaneous condition to the right to receive payment hereunder.
- 23.0 **APPROVAL BY OWNER.** In the event the Principal Contract requires that the Owner approve subcontract agreements or subcontractors, this Subcontract shall nevertheless be valid upon execution by the Contractor and shall remain valid until and unless the Owner expressly disapproves the Subcontract and/or the Subcontractor and so notifies the Contractor. In such event, this Subcontract shall be null and void and the Subcontractor shall make no claim for damages against the Contractor by reason of such disapproval.
- 24.0 **AFFIRMATIVE ACTION / EQUAL OPPORTUNITY CERTIFICATION.** The Equal Employment Opportunity Clause required under Executive Order 11246, and the employee notice clause pertaining to employee rights under the National Labor Relations Act, set forth in 29 CFR Part 471 Appendix A to Subpart A, are incorporated by reference in this Subcontract. By signing this Subcontract, Subcontractor certifies that, to the extent applicable, **this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-300.10 and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.** Subcontractor additionally certifies that it complies with the authorities cited above; and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8. Evidence of compliance with such laws will be furnished by the Subcontractor to Contractor within ten (10) days of written request by Contractor.
- 25.0 **ASSIGNMENT, SUBLETTING, OR DELEGATION PROHIBITED.** The Subcontractor may not assign, sublet, subcontract or delegate any part of his rights or duties or both nor any money due or to become due under this Subcontract and any such assignment, subletting, subcontract or delegation shall be void.

26.0 DISPUTE RESOLUTION

- 26.1 **Determination by Contractor's Representative:** The Contractor's Representative shall decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Subcontract. In the event the Contractor and the Subcontractor are unable to resolve their differences concerning a determination by the Contractor's Representative, the Subcontractor may initiate a dispute in accordance with the procedure set forth in this Article. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.
- 26.2 **Dispute Procedure:** Subcontractor shall notify Contractor in writing of its protest or dispute with a determination of Contractor's Representative within ten (10) days of the date of such determination.
- 26.3 **Dispute Resolution:** Within (30) days following Contractor's receipt of Subcontractor's written protest, an executive level representative of Contractor and Subcontractor, each with decision-making authority, shall meet to attempt to negotiate a resolution of the dispute in good faith.
- 26.4 **Legal Proceedings:** If the Dispute has not been resolved by negotiation within forty-five (45) days after Contractor's receipt of Subcontractor's notice of protest or dispute, or if the parties' executives fail to meet within thirty (30) days after such notice, the Subcontractor may commence a lawsuit in a Court of competent jurisdiction of the State of New York or a United States Court in New York, under the procedures and laws applicable in that Court.
- 26.5 **Jury:** By execution of this Subcontract, Subcontractor waives its right to a trial by jury.
- 27.0 **RIGHTS TO WORK.** Subcontractor hereby assigns to Contractor all patentable ideas, products, equipment, materials or processes ("Ideas") arising out of Subcontractor's performance of work hereunder. Subcontractor shall promptly and fully disclose to Contractor all such Ideas. At Contractor's request, Subcontractor will assist Contractor in every proper way, at Contractor's cost and expense, to obtain patents for Contractor's benefit. All such Ideas shall be and remain Contractor's property whether or not disclosed or patented.
- 28.0 **CONFIDENTIALITY.** All information provided to Subcontractor in connection with this Subcontract and acquired as a result of Subcontractor's performance of the scope of work hereunder is to be treated as confidential. No confidential information may be released by Subcontractor or used for any purpose by Subcontractor, or by any party for whom Subcontractor is directly responsible, other than for the limited purpose of performing the work under this Subcontract; and Subcontractor shall indemnify Contractor against any liability in connection with any other use of such information by Subcontractor or any other entity who obtains such information by or through Subcontractor.

EXECUTION OF THE WORK - PART II

- 1.0 **DESCRIPTION OF WORK.** In consideration of the payments to be made, the Subcontractor agrees, at its own costs and expense, to perform all labor and services and furnish all materials, supplies, plant and equipment necessary to complete the work within the time specified and in accordance with the terms, conditions and provisions of this Subcontract, in such manner as to facilitate the Contractor's obligations pursuant to the Principal Contract.
- 1.1 **Scope of Work** [insert detailed description of the work]
- 2.0 **CONSIDERATION.** The Contractor agrees to pay and the Subcontractor agrees to accept, the total price of \$_____, as full compensation for the following: all work done and all materials furnished, all costs and expenses incurred, all loss or damages sustained by reasons of the action of the elements or arising from the nature of the work, any unforeseen obstructions or difficulty encountered in the execution of the work, and for all expenses incurred by, or in consequence of, the suspension or discontinuance of the work as herein specified, and for maintaining the work in good condition until the final payment is made.
- 3.0 **DATE AND PLACE OF PERFORMANCE.** Time is of the essence of this Subcontract. The work shall be performed and completed by the milestone dates listed in the following table.
- 3.1 **Table (insert or attach)**
- 3.2 **Adjustment of Schedule:** The Contractor shall have the right to adjust this schedule. The Subcontractor agrees that it shall have no claim for damages against the Contractor by reason of such adjustments.
- 4.0 **JOB MEETINGS.** The Subcontractor agrees to require his General Manager to attend morning scheduled meetings at a time and place at the job site from one to three times weekly, as designated by the Contractor. The Subcontractor further agrees to attend a Subcontractors meeting once weekly at a time and place at the job site, as designated by the Contractor, while his portion of the Project is actively under construction or being scheduled.
- 5.0 **WORK HOURS.** Project work hours are from 7:00 AM to 3:30 PM, 5 days per week (Monday through Friday). Subcontractor will be required to work within this schedule so long as Project scheduling requires. Subcontractor further agrees to make up rain delays to maintain schedule by working Saturdays and Sundays at no additional cost to the Contractor.
- 6.0 **DRAWINGS FURNISHED BY SUBCONTRACTOR.** The Subcontractor shall prepare and submit to the Contractor for approval all shop drawings, record drawings, working drawings and construction drawings, as may be specified or directed or necessary in the judgment of the Contractor, and/or Engineer, or required by the Principal Contract in connection with the scope of work. Such drawings shall be complete as to the arrangement of the equipment and component parts constituting part of the work.
- 6.1 **Drawing Identification:** All drawings shall be suitably identified with the name of the Project, Principal Contract, Subcontract Number, Subcontractor's Name, Name of the equipment or materials manufactured and the date.
- 6.2 **Drawing and Sample Submittal/Review:** The following provisions shall apply to shop drawing and sample reviews:

- a) Contractor will review shop drawings and samples with reasonable promptness to avoid delay in the Work.
- b) Contractor's shop drawing and sample revise is for conformance with the Project design concepts and information in the Contractor Documents only. The review of separate items does not constitute review of an assembly in which the items function.
- c) Contractor's shop drawing and sample review does not relieve Subcontractor of responsibility for deviations and/or omissions from the Contract Documents, nor does it relieve Subcontractor of responsibility for errors and/or omissions of any kind in shop drawings and samples. If Subcontractor calls such deviations and/or omissions to Contractor's attention, Subcontractor must state in writing whether or not such deviations and/or omissions will result in any change in Project cost or schedule. All shop drawings and samples must be submitted through Contractor's Project Manager or designated representative.
- d) Drawings and similar data will be reviewed and returned to Subcontractor, stamped by the Contractor as follows:
 - i. "Reviewed," if no change or rejection is made.
 - ii. "Reviewed and Noted," if minor changes or additions are made but resubmittal is not considered necessary. All copies returned to Subcontractor will bear the corrective marks.
 - iii. "Resubmit," if the changes requested are extensive or if retransmittal of the submittal to another Subcontractor, after correction, is required. In this case, the Subcontractor shall resubmit the items after correction.
 - iv. "Rejected," if it is considered that the data submitted cannot, with reasonable revision, meet the requirements of the Contract Documents.
- e) Where only one sample is called for, Contractor may respond by letter; where two or more samples are called for, one sample will be returned with Contractor's stamp and signature or initials.
- f) One set of shop drawings will be returned electronically or as required by Contractor and Owner

6.3 Submittal Schedule: All submittals required shall be made on such a schedule and at such time as to permit adequate review. The Subcontractor shall make due allowance for possible revisions and resubmittals. Delays caused by resubmittals of drawings for data or approval shall be the responsibility of the Subcontractor. No work covered by submitted drawings or drawings specified to be submitted shall be performed until such drawings and data have been reviewed in accordance with this Article 6.0.

7.0 CORRECTION OF WORK. Any work performed which may be disapproved by the Contractor and/or Engineer as unsuitable and/or not in keeping with the terms of the Subcontract shall be immediately removed by the Subcontractor at his own cost from the site. If the Subcontractor fails or refuses to properly correct faulty or defective work, the Contractor may arrange for such correction. The Subcontractor shall pay the Contractor the costs incurred to perform such work including an allowance for supervision, overhead and profit. The Subcontractor shall also be subject to backcharges for Contractor's costs as provided in Article 4 of the General Terms and Conditions - Part I of this Subcontract.

7.1 Acceptance of Work: Failure on the part of the Contractor and/or Engineer to condemn defective work shall not imply acceptance of the work nor act to release the Subcontractor from his obligations to repair, replace or otherwise make good the work at his own expense notwithstanding that partial or full payments may have been made therefore.

8.0 COOPERATION WITH OTHERS. The Subcontractor is aware of the fact that the Contractor is or will be, from time to time, engaging and employing the services of other Subcontractors, and other specialty trades and artisans for the performance of other work in and about the Project, and that the Subcontractor may not have exclusive possession of the site at all times during the performance of the work. The Subcontractor will be

required to cooperate with the various subcontractors, contractors and trades employed by the Contractor and arrange the sequence of the work hereunder to conform with the progressive operations of the work already under contract and to be put under contract. Cooperation and adjustment with the subcontractors already engaged and to be engaged upon the site is essential to properly coordinate the efforts of all subcontractors engaged in the work adjacent to and upon the Project. Where the work of the Subcontractor, the Contractor and the other subcontractors overlaps or dovetails, materials shall be delivered and operations conducted so as to carry on the work continuously in an efficient and workmanlike manner. Delays or oversights on the part of any subcontractor in getting any and/or all of his work done in the proper way, thereby causing, cutting, removing and replacing work already in place, shall not be a basis for a claim for extra compensation against the Contractor. In case of interference between the operations of different subcontractors, the Contractor will be the sole judge of the rights of each subcontractor and of the sequence of the work necessary to expedite the completion of the Project and in all cases its decision shall be accepted as final.

8.1 Site Interference: The Subcontractor agrees that he has included in his prices for the various items of work under this Subcontract, the cost of doing the work because of the fact that he does not have an exclusive site for the work, and that he will make no claim for additional costs because of interference's of roadway use, other subcontractors or prime contractors and necessary utility work and similar interference's and the necessity or desirability of opening certain portions of the Project to traffic, delivery of materials, installation of utilities and roads and occupancy before the entire work is completed.

9.0 EMPLOYMENT. The Subcontractor is to employ people and mechanics for the work who will at all times work in harmony with the personnel employed by the Contractor and other subcontractors on the job, and should the Contractor's or the Subcontractor's work for any reason be stopped or materially delayed in the judgment of the Contractor due to the Subcontractor's "not having proper people or mechanics to do the work on the job, then the Contractor shall have the right, after twenty-four (24) hours written notice to employ such people or mechanics to complete the work who will work in harmony with the personnel employed by the Contractor and the other subcontractors on the job, and the cost of completing the unfinished part of the Subcontractor's work shall be backcharged to the Subcontractor. Without limiting the generality of the foregoing, "work in harmony" shall include the provision of labor that will not cause, cause to be threatened, engage in, or give rise to, either directly or indirectly, any disruption, slowdowns, or stoppages to the work being performed pursuant to this Subcontract, or any violence or harm to persons or property.

10.0 ATTACHMENTS. See Attachments - Part III.

ATTACHMENTS - PART III

Subcontract Attachments or Exhibits are as follows:

- Exhibit A - Principal Contract
- Exhibit B - Project Specifications
- Exhibit C - Subcontractor Warranties
- Exhibit D - Subcontractor Quality Control Program
- Exhibit E - Insurance Requirements
- Exhibit F-1 - Conditional Waiver and Release Upon Progress Payment
- Exhibit F-2 - Final Waiver and Release Upon Final Payment
- Exhibit G – Recommendation for Contract Change
- Exhibit H – Subcontract Change Order
- Exhibit I – Field Order Directive
- Exhibit J - Labor Rates
- Exhibit K – Unit Price Schedule

EXHIBIT A
PRINCIPAL CONTRACT

1.0

[Insert description of Principal Contract – name of agreement, parties to agreement and date of agreement]

EXHIBIT B PROJECT SPECIFICATIONS

- 1.0 **Schedule of Values:** Inclusion of schedule of values submitted for approval by Contractor. Costs shall be appropriated by line item.
- 2.0 **Work Breakdown Structure:** Subcontractor shall submit for approval by Contractor.
- 3.0 **Cleanup Provisions:** Subcontractor shall comply with housekeeping responsibilities in his/her work areas to the satisfaction of the Contractor. Should Subcontractor fail to do so Subcontractor shall provide at its expense: the necessary labor, equipment and materials to clean up the Project site as directed by the Contractor. Failure to comply will result in backcharges to Subcontractor in the amount required to perform such work.
- 4.0 **Drawings and Specifications:** [list if any]
- 5.0 **Addendum, exceptions & clarifications, etc.:** [list if any]
- 6.0 **Liquidated Damages:** [specify, if any]

EXHIBIT C
SUBCONTRACTOR WARRANTIES

1.0 Eighteen (18) months after Contractor's acceptance of Subcontractor's work.

EXHIBIT D
SUBCONTRACTOR QUALITY CONTROL PROGRAM

- 1.0 **QA/QC Program:** Submit QA and QC program for approval by Contractor. As per 12.3 of the General Terms and Conditions, Part I of the Subcontract, a copy of Contractor's QA and QC program will be supplied if requested by the Subcontractor, for its use.
- 2.0 **Updates, Additions and Deletions:** It will be the responsibility of the Subcontractor to maintain the QC/QA manual throughout the life of the Project.

EXHIBIT E INSURANCE REQUIREMENTS

Subcontractor shall maintain in full force and effect insurance coverages of the types and in the amounts required by the Principal Contract but in no event less than the following coverages (as indicated by an "x" in the left hand column):

- a. Comprehensive General Liability Insurance in an occurrence form providing coverage for the Subcontractor in the form as hereinabove required of the Contractor including Completed Operations Insurance with coverage to remain in effect for two full years following final acceptance by Owner, Products Liability Insurance, Contractual Liability Insurance with coverage to include liability assumed by Subcontractor under the indemnification provision contained in this Subcontract, Broad Form Property Damage, Employees as insureds, and coverage for the Sudden and Accident Release of Pollutants.
- Limit of Liability \$1,000,000 per Occurrence / \$2,000,000 Aggregate
- b. Comprehensive Automobile Liability Insurance providing coverage for the Subcontractor and Subcontractor's agents because of bodily injury, sickness or disease, including death at any time, resulting therefrom, sustained by any person, caused by accident and/or arising out of the ownership, maintenance or use of owned, non-owned, hired or borrowed automobiles and for damage because of injury to or destruction of property, including the loss of the use thereof, caused by accident and/or arising out of the ownership, maintenance or use of owned, non-owned, hired or borrowed automobiles, including MCS-90 Endorsement for all commercial carriers and waste haulers.
- Limit of Liability - \$1,000,000 Bodily Injury and Property Damage Combined Single Limit
- c. Statutory Workmen's Compensation, Employers' Liability and Disability Benefits, Policies to afford coverage in state where work is performed.
- Employers' Liability Limit - \$1,000,000
- d. Excess Liability - \$5,000,000
- Umbrella form providing additional coverage for general liability, automobile liability and employer's liability policies.
- e. Professional Liability insurance in an amount not less than \$5,000,000.
- f. Pollution Liability or Consultants Environmental Liability coverage providing coverage for all professional services and contracting operations of the named insured(s).
- Limits of Liability \$1,000,000 combined single limit / \$3,000,000 aggregate
- g. Owner's and Contractor's Protective Liability insurance in limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate.

Coverage shall be provided by insurers satisfactory to Client and Contractor under the terms of the Principal Contract. Such insurance coverage shall be by a casualty insurance company authorized under the laws of the State of New York with a Best Rating of at least A XII. **Each policy shall be primary with respect to any other insurance and shall make reference to this Subcontract.**

Subcontractor shall, on a continuing basis throughout the period of engagement, provide and maintain current certificates of insurance **which shall name Owner and Contractor as additional insureds** on Subcontractor's a, b, c, and d policies of insurance, shall name Owner as additional insured on Subcontractor's f policy of insurance, and shall provide thirty (30) days' notice prior to change or cancellation of policy and **shall waive rights of subrogation relative to Owner and Contractor**. Said certificates of insurance shall indicate that Subcontractor is the primary named insured.

In the event of the failure of the Subcontractor to furnish and maintain such insurance, Contractor shall have the right to take out and maintain such insurance for and in the name of the Subcontractor, and the Subcontractor agrees to pay the cost thereof and to furnish all necessary information to permit Contractor to purchase and maintain such insurance for the account of the subcontractor and agents. Compliance by the Subcontractor with the foregoing requirements to carry insurance and furnish certificates shall not relieve the Subcontractor from liability under any provision of this Subcontract. This provision shall survive the Subcontract.

If requested, Subcontractor shall also verify to Contractor payments of all premiums for the coverage period certified.

EXHIBIT F-1
CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

WHEREAS, the undersigned Subcontractor has been employed by O'Brien & Gere, Inc. of North America to furnish work performed (labor, materials and equipment necessary) for the premises known as _____, and the Project known as the _____ Project; O'Brien & Gere Project No. _____ (the "Project");

NOW, THEREFORE, for good and valuable consideration, and simultaneously with payment of \$_____ for the labor performed and material supplied as described in **Exhibit A** hereto (attached invoice), the undersigned hereby covenants and agrees that it shall not in any way claim or file notice of mechanics' lien or other lien against the real property above described, or any part thereof, for any materials heretofore procured or labor heretofore performed by it in connection with the services and materials provided by the undersigned with reference to the real property and Project above described, releases the Contractor and Owner of any claims arising from delays, disruptions and other impacts through the date of this release stipulated below; and

The undersigned hereby formally and irrevocably waives and releases any and every lien, charge or claim of any nature whatever which it now has against the real property above described in connection with or arising out of the said labor services and materials.

IN WITNESS WHEREOF, this waiver and release has been duly executed by the undersigned as of the ____ day of _____, 20____.

(Signature)

(Title)

(Name of Subcontractor)

SUBCONTRACTOR OR SUBCONTRACTOR'S AUTHORIZED REPRESENTATIVE

On this ____ day of _____, 20____ before me personally appeared _____, known to me and who declared that he/she is the _____ of _____, the party on behalf of which he/she executed the foregoing instrument.

My commission expires _____
(Notary Seal/Stamp)

Notary Public

EXHIBIT F-2
FINAL WAIVER AND RELEASE UPON FINAL PAYMENT

WHEREAS, the undersigned Subcontractor (“Subcontractor”) has been employed by O’Brien & Gere, Inc. of North America to furnish work performed (labor, materials and equipment necessary) (the “Work”) for the Premises known as _____ for the _____ Project; OBG Project No. _____ (the “Project”).

NOW, THEREFORE, in consideration of \$_____ (total subcontract value) which represents full and complete payment for the Work, the Subcontractor/Supplier does hereby:

1. Release, remise and forever discharges O’Brien & Gere, Inc. of North America and the Project, the Owner of the Premises, and their successors or assigns, from any and all claims, demands, and causes of action which the Subcontractor/Supplier has, might have, or could have against O’Brien & Gere, Inc. of North America or Owner by reason of, or arising out of the Work.
2. Acknowledge and agree that upon receipt of the undersigned of a check from O’Brien & Gere, Inc. of North America in the sum of \$_____ (amount of final payment), this document shall become effective to release any mechanic’s lien, stop notice or bond right the undersigned has on the Project. This release covers any and all payment due to the undersigned for the Work, including but not limited to, all labor, services, materials, equipment and additional work. Before relying on this document, any recipient should verify evidence of payment to the undersigned.
3. Agree to indemnify and save harmless O’Brien & Gere, Inc. of North America, the Project, and the Owner of the Premises, on account of any liens, claims or demands which may be asserted by any employee, supplier or Subcontractor of the Subcontractor/Supplier on account of labor performed or material furnished by such person to the Subcontractor in connection with the Work.

WITNESS our hand and seal this ____ day of _____, 20____.

(Subcontractor/Supplier)

ATTEST:

_____ By: _____ (Seal)

Title: _____

CONTRACT VALUE:	\$	
CHANGE ORDER:	\$	
REVISED CONTRACT VALUE:	\$	
PREVIOUSLY PAID:	\$	
AMOUNT OF FINAL PAYMENT:	\$	
BALANCE DUE:	\$	0.00

EXHIBIT G
RECOMMENDATION FOR CONTRACT CHANGE (RCC)

RCC No. _____

Subcontractor Name:	
Date Submitted:	RCC Value:

Description of Change
(Including description and material/labor breakdown)

Reason for Change
(complete description of any change necessary)

RCC Change Amount

Time Extension:	
Negotiated Amount:	
Submitted By:	

**EXHIBIT H
SUBCONTRACT CHANGE ORDER (CO)**

Subcontractor Name:	CO No.:
Date:	Project Name
Subcontract No.:	Project No.:
Subcontract Date:	Change Type:

Description of change (including description and material/labor breakdown)

SCOPE OF WORK

Task Description	Task/Sub Task No.	Total Cost
	TOTALS	\$0.00

Base Contract Value \$0.00
Net Previous Changes \$0.00
Revised Contract Value \$0.00
This Contract Change \$0.00
Current Contract Price \$0.00
Original Contract Schedule Completion Date
Revised Contract Completion Date through This CO _____

Approved By:
(Sub Name)

Approved By:
O'Brien & Gere, Inc. of North America

Authorized Representative

Authorized Representative

Date: _____

Date: _____

The above price of this change order includes all impacts direct or indirect including, but not limited to general conditions, any inefficiencies and any impacts on the unchanged work which includes the cumulative effect of all previous changes. O'Brien & Gere reserves the right to rescind this change order pending an audit of subcontractor's scope-of-work, unit pricing and final costs. All other terms and conditions of the subcontract remain unchanged.

EXHIBIT J
LABOR RATES FOR 16.3.3

Detailed breakdown of all wage rates and payroll burden costs for **Time and Material extras**. Payroll burden items, FICA, FUI, SUI, will be reimbursed on an average annualized basis. *All rates are subject to audit.* The required format is as follows:

Contractor: **Project Name:**
Trade: **Project Number:**
Position: **Union Local No.:**
From: **To:**

	<i>Straight Time per Hour</i>	%	<i>Overtime Per Hour</i>	<i>Double Time per Hour</i>
Base Wage Rate	\$		\$	\$
Overhead	\$		(a)	(a)
Profit	\$		(a)	(a)
FICA	\$ (b)		\$ (b)	\$ (b)
FUI	\$ (b)		\$ (b)	\$ (b)
SUI	\$ (b)		\$ (b)	\$ (b)
Workers Com	\$ (c)		\$ (c)	\$ (c)
Health & Welfare	\$		\$	\$
Pension	\$		\$	\$
Vacation	\$		\$	\$
Holiday	\$		\$	\$
Other Union Fringes	\$		\$	\$
Explain:				
Charge Per Hour	\$		\$	\$

Notes:

- (a) Do not include overhead & profit on the premium portion of overtime and double time.
- (b) State the average annualized payroll tax rate. Payroll burden items to be reimbursed on an average annualized cost.
- (c) The method of calculation Workers Compensation insurance must state if the subcontractor is self-insured.

**EXHIBIT K
UNIT PRICE SCHEDULE**

In the event a Change Order is issued in accordance with Section 16.3.2, the following Unit Prices shall apply. The following Unit Prices are all inclusive and shall include labor, fringes, taxes, insurance, material, equipment and all overhead and profit. These Unit Prices apply to additions and deletions.

Description	Cost Per Unit