

Project Plans:
 Project Specifications:
 Engineer/Architect:
 Plan Date:
 Plan Last Revision Date:
 Specification Date:
 Addendums/Dates:
 Project Owner:

4. Davis Bacon Act – Is (Is Not) Part of this Contract.

5. Work by Others:

a.

6. Certifications and Shop Drawings - Eight (8) copies of materials certifications and shop drawings as required shall be submitted for approval purposes. All materials shall be in accordance with the referenced drawings and specifications. Submittals shall be sent to:

Gibbs & Register, Inc.
Attn:
232 South Dillard Street
Winter Garden, FL 34787

ARTICLE 1
GENERAL PROVISIONS

- 1.1.1 The Subcontract Work is the construction labor, material, tools, equipment and supervision required under this Subcontract to perform the work as per the Scope of Work.
- 1.1.2 The Subcontract Documents, which constitute the entire agreement between Subcontractor and G&R, consist of this Subcontract, Plans, Specifications, and all attached exhibits

ARTICLE 2
SUBCONTRACTOR'S RESPONSIBILITIES

2.1 Subcontractor's Work – Subcontractor shall furnish all labor material, equipment, supervision, inspection, testing, tools, construction equipment and specialty items necessary to execute and complete construction of the Subcontract work. Subcontractor warrants that it has inspected the site and has satisfied itself regarding all conditions affecting the Subcontract work and the meaning and intention of the Subcontract Documents. Subcontractor is solely responsible for the means, methods, techniques, sequences, procedures and coordination of the Subcontract Work.

2.2 Law Compliance and Coordination – During the performance of the Subcontract Work, Subcontractor shall comply with all laws and regulations and shall coordinate the Subcontract Work with the work of G&R, Owner and other subcontractors to avoid any interference in the project.

2.3 Submittals – Subcontractor shall prepare or cause to be prepared, all shop drawings, samples and other submittals, which are required by the Subcontract Documents or are necessary to the performance of Subcontractor's obligations hereunder. Such submittals shall bear the Subcontractor's approval stamp and shall be submitted in time to permit adequate review by G&R and in such sequence as to cause no delay in the Project or in the work of the Owner, G&R or G&R's other Subcontractors.

2.4 Property – Subcontractor shall take the necessary precautions to protect its property, the Subcontract Work and the work and property of the Owner, G&R and all other persons from damage or loss caused by operations under this Subcontract.

2.5 Representative – Subcontractor shall designate to G&R its representative who shall be at the site to be in charge of and responsible for the Subcontract work.

2.6 Safety Precautions and Procedures – Subcontractor shall be solely responsible for protecting its employees and all other persons from risk of death, injury or bodily harm arising from out of or in any way connected with the Subcontract Work.

2.6.1 Subcontractor agrees to comply with all applicable laws and regulations for the safety of persons or property in the performance of the Subcontract Work. Subcontractors shall report all injuries to G&R within twenty-fours (24) hours of their occurrence.

2.6.2 Subcontractor agrees to abide by all safety requirements required by G&R's and owner safety policies. *G&R's Field Safety Brochure is included as Exhibit 'A' in this Agreement.*

2.7 Warranties – Subcontractor warrants to G&R and owner that all materials and equipment furnished under this Subcontract will be new, unless otherwise specified, and that all construction work will be of good quality, free from improper workmanship and defective materials, and fit for the purpose intended. Subcontractor agrees to correct all Subcontract Work performed and materials supplied by it under this Subcontract that proves to be defective in

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material or workmanship within a period of one (1) year from the date of owner acceptance of the project or for such longer period of time as may be provided in the Subcontract Documents. Any Warranty or Guarantee obtained by Subcontractor from any manufacturer shall be deemed to have been obtained for the benefit of G&R and Owner. This warranty shall be in addition to all other warranties and remedies, expressed or implied, under the law.

**ARTICLE 3
G&R'S RESPONSIBILITIES AND RIGHTS**

3.1 Information/Instructions – G&R will make information affecting the Subcontract Work available to the Subcontractor.

3.2 Completing and Correcting Work – After giving Seventy-Two (72) hours notice to subcontractor, G&R may complete or correct any part of the Subcontract Work which Subcontractor has neglected or shown itself otherwise unable to expeditiously complete or correct and deduct the cost of doing so from Subcontractor's payments. If the work not accomplished involves more than one Subcontractor, the cost will be divided in accordance with G&R's determination. G&R may avail itself of the above procedure and or such other rights and remedies which are available under this Subcontract, applicable law or both.

**ARTICLE 4
SCHEDULE**

4.1 Subcontract Schedule – Subcontractor shall accomplish the Subcontract Work within specified days by the project schedule or as indicated in the Subcontract Documents. Time is of the essence.

4.2 Substantial Completion - The date of Substantial Completion of the project, or a designated portion thereof, if the date when construction is sufficiently complete in accordance with the drawings and specifications so Owner can occupy or utilize, or in fact does occupy or utilize the Project, or designated portion thereof, for the use for which it is intended.

4.3 Delays – If Subcontractor is hindered or delayed in the progress of the Subcontract Work by causes inherent in the Subcontract Work, Subcontractor shall overcome such delays and agrees it will make no claim for damages or schedule extensions. Subcontractor acknowledges that Subcontract Price and Subcontract schedule are based on this understanding.

4.3.1 Subcontractor shall notify G&R within twenty four (24) hours if Subcontractor is hindered or delayed at any time in the progress of the Subcontract Work by any act or neglect of G&R, Owner or any separate contractor employed by or with them, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, acts of God or by any causes beyond the Subcontractor's control. The Subcontractor schedule shall be extended by Change Order as determined and fixed by G&R and approved by Owner. Subcontractor acknowledges that the Subcontract price is based on this fact. Subcontractor's sole remedy for any delay damages caused by other G&R subcontractors shall be against them. Subcontractor's acts or failures to act. Subcontractor shall defend and indemnify Owner and G&R against claims brought by other G&R subcontractors for delays, which result from Subcontractor's acts or failures to act.

4.3.2 Liquidated Damages – The subcontractor recognizes that time is of the essence of this agreement and that the Owner will suffer financial loss if the Work is not substantially complete within time specified in the G&R's contract with the Owner. If liquidated damages are assessed to G&R as a result of the subcontractor's performance on the project, this amount will be deducted from the amount G&R owes the subcontractor.

**ARTICLE 5
SUBCONTRACT PRICE**

5.1 Pricing - G&R shall pay subcontractor based on the unit prices established and shown in the Scope of Work of this Agreement for Subcontractor's entire performance of this Subcontract, including all taxes imposed on the Subcontractor with ten (10%) percent retainage held on all invoices.

5.2 Additional Cost - G&R will not be responsible for any additional cost incurred due to quantity overruns, price escalations, additional mobilizations, changed site conditions, weather, or alternate work items, unless agreed to in writing prior to subcontractor incurring added cost. Any alternate work items and/or additional cost included in the Scope of Work and/or Special Conditions must be agreed to in writing by G&R prior to subcontractor incurring added cost. G&R will not be responsible for any payment of this cost unless agreed to in writing as stated.

**ARTICLE 6
CHANGES IN THE SUBCONTRACT WORK**

6.1 Change Orders – G&R may make changes in the Subcontract work by written Change Order. Subcontractor shall immediately proceed with the changes required so as not to delay the progress of the Subcontract Work or the project.

6.1.1 Subcontractor shall notify G&R in writing if it contests the Change Order's changes in the Subcontractor Price and/or Subcontract Schedule no later than five (5) days after Subcontractor's receipt of the Change Order. Timely contesting the Change Order is a condition precedent to making claim related to the Change Order. If no Agreement is reached between the parties regarding the adjustment of the Subcontract Price and/or Subcontract Schedule, Subcontractor shall continue to proceed with, and complete the changes required.

6.2 Concealed, Unknown or Hazardous Conditions – If Subcontractor encounters concealed or unknown conditions at the site which differ materially from those indicated in the Subcontract Documents or which differ materially from those ordinarily found to exist in Subcontract Work, the Subcontract Price and Subcontract Schedule may be adjusted for such concealed or unknown conditions by Change Order.

6.2.1 If Subcontractor encounters materials reasonably believed to be a hazardous substance, which has not been rendered harmless, Subcontractor shall immediately stop work in the area affected and report the condition to G&R. Work shall resume as directed by G&R.

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- 6.2.2 If additional compensation is required, subcontractor will provide G&R with a complete accounting of change to include a written description, cost breakdown, and associated backup within five (5) days of notice for G&R to present to the owner. Failure to notify G&R of changes within time frame noted will constitute a waiving of rights to collect costs at a later date.
- 6.2.3 Additional compensation to subcontractor for concealed, unknown, or hazardous conditions will be to the extent of payment to G&R from the owner, less G&R's cost & markups.

**ARTICLE 7
PAYMENTS TO SUBCONTRACTOR**

7.1 Progress Payments – Subcontractor shall submit monthly Applications for Payment to G&R on forms acceptable to G&R and with such additional substantiating information as may be required by G&R. A partial release of lien shall accompany each Application for Payment. All pay applications must be submitted on the standard AIA document.

- 7.1.1 G&R agrees to pay Subcontractor for the Work in accordance with the unit prices included in this Exhibit. The unit prices are firm, not subject to escalation and are complete payment for providing the Work as stated in the Scope of Work of this Agreement.
- 7.1.2 G&R shall pay Subcontractor ninety percent (90%) of currently due amount shown on the Application for Payment within ten (10) days of its receipt of payment by Owner, Subject to the condition of paragraph 7.1.3.
- 7.1.3 Any sum(s) owed G&R by Subcontractor under any provisions or obligation of this Subcontract or any agreement between them may be retained out of payments due or to become due to Subcontractor hereunder.
- 7.1.4 Subcontractor warrants and guarantees that title to all Subcontract Work will pass to the Owner upon receipt of payment, free and clear of all liens or other claims. Subcontractor shall defend and indemnify G&R and Owner against any liens or claims filed on the property of Owner as a result of Subcontractor's performance.
- 7.1.5 Application for Payment, (one notarized, original set), shall be submitted three (3) days prior to the payment cut off date each month as per G&R's contract with the owner. Application for Payment shall be based on work completed through the owner's payment cut off date for the month. A partial lien waiver (original) shall be attached. Payment will be sent by mail from G&R. All pay applications must be submitted to G&R no later than the 18th of the month. Payment will be based on work completed from the 18th of the previous month.
- 7.1.6 Should this project required Certified payroll documents, G&R may withhold payments to Subcontractor if these documents are not submitted as required to G&R.

7.2 Final Payment – Final Payment to Subcontractor will be made upon Application for Payment and paid no later than Thirty (30) days after inspection and verification by G&R and Owner, payment by Owner to G&R, and the satisfaction of all other conditions required for payment. The word "Final" shall be placed on the last Application for Payment and Final Waivers of Lien shall be included. Acceptance of Final Payment by Subcontractor shall constitute a release and waiver by Subcontractor of all claims Subcontractor has or may have against G&R and Owner.

**ARTICLE 8
INDEMNITY AND INSURANCE**

8.1.1 Indemnity – Subcontractor shall defend and indemnify and hold harmless G&R and the Owner, as well as any other parties which G&R is required to defend, indemnify and hold harmless, and their agents, servants and employees against all claims and suits for loss or damage to property, personal injury, including death to persons and from all judgments recovered thereof, and from all expenses for defending such claims or suits, including court costs, attorney's fees which result from the performance of the Subcontract by the Subcontractor, it's subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable regardless of whether it is caused in part by a party indemnified there under. Subcontractor's obligation hereunder shall not be limited by the provisions of any worker's compensation or similar act. The parties agree that this indemnification provision shall be enforced to the full extent permitted by law and agree that neither of them will challenge the validity of this indemnification provision. The parties further agree that it is their intention that this provision be lawful and enforceable and they agree that if for some reason this provision, or any part thereof, is determined to be unenforceable the way it is written, this provision shall be construed to be enforceable up to whatever limit is established by applicable law.

- 8.1.2 Subcontractor's indemnification of G&R, the Owner and/or other parties for liability caused in whole or in part by any act, omission or default of such party shall be limited to \$2,000,000 or the limits (exclusive of deductibles) of the applicable insurance required by Subcontractor under this Subcontract, whichever is greater. The parties acknowledge and agree that this monetary limit, if required, bears a commercially reasonable relationship to this Subcontract, in so far as, among other factors, the parties have taken into account the availability and cost of insurance and other risk transference devices, the scope of the work, the risks associated with the work, and the compensation and any other benefits exchanged between the parties in connection with this Subcontract.
- 8.1.3 Subcontractor shall strictly comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity on the project, including OSHA, and expressly agrees to indemnify, defend, and hold G&R harmless with respect to any fines, penalties, liabilities, or other consequences for its failure to so comply.
- 8.1.4 Further, Subcontractor agrees that should any of its subcontractors, suppliers or vendors, at any tier level, assert a claim against the project, Owner or G&R, then Subcontractor will defend, indemnify and save harmless G&R and Owner from any such claims, including but not limited to bonding off any liens.

8.2 Insurance – Without limiting the liability of Subcontractor under this Subcontract, Subcontractor shall maintain, with G&R and Owner as additional insured's thereon, the following insurance provided by insurance companies acceptable to G&R and licensed to do business in the state where the Project is located:

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8.2.1 A) Worker's Compensation Insurance in full compliance with workers compensation laws of states within which any part of the Subcontract Work is to be performed, together with Employer's Liability Coverage with:

- Minimum limits of liability in the amount of - **\$100,000/\$500,000/\$100,000**
- If subcontractor is leasing employees, a list of all covered employees must be included with the certificate of insurance.
 - Only individuals who appear on the list of covered employees may perform work as specified under this subcontract.
 - The use of any non-covered persons to perform the work set forth in this subcontract shall void the contract.

B) Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned vehicles with the following minimum limits of liability:

- Combined single limit - **\$1,000,000.00 each occurrence**

C) Commercial General Liability Insurance and if necessary, Excess Liability Insurance, which is written on an occurrence basis, with the following minimum limits of liability:

- General Aggregate **\$1,000,000.00**
- Products/Completed Operations Aggregate **\$1,000,000.00**
- Each Occurrence **\$1,000,000.00**

D) Commercial General Liability policy and any Excess policies necessary to meet the required limits shall include contractual liability coverage. G&R and the Owner shall be named as additional insured's on the Commercial General Liability, Auto, and any required Excess policies. The Commercial General Liability, Auto and Excess shall include a severability of interest or cross liability clause and shall be endorsed to be made primary with respect to any applicable insurance maintained by G&R or Owner.

8.2.2 Subcontractor shall furnish certificates for G&R and Owner evidencing satisfaction of these insurance requirements before beginning the Subcontract Work. These certificates shall provide that thirty (30) days written notice shall be given to G&R before the policies are changed or cancelled.

**ARTICLE 9
TERMINATION AND SUSPENSION**

9.1 Termination for Cause – G&R may give written notice that it intends to terminate this Subcontract if Subcontractor is in breach of a provision of the Subcontract Documents. If the Subcontractor fails to correct such a breach within forty eight (48) hours after being given notice, G&R may, without prejudice to any other remedy, make good such deficiencies and deduct the cost thereof from the payment due Subcontractor or, at G&R's option, may terminate Subcontractor and take possession of the site and of all materials, equipment, tools and construction equipment and machinery, whether or not located at the site, and finish the Subcontract Work by whatever method G&R may deem expedient. Any termination for cause shall be concerted into a termination for convenience automatically in accordance with Section 9.2 should the facts not support termination for cause or should G&R so choose.

9.1.1 Termination for Convenience – G&R may terminate this Subcontract without cause upon three (3) days written notice to Subcontractor. Subcontractor shall immediately stop the Subcontract Work upon receipt of such notice.

9.1.2 Suspension – Should the Owner or G&R suspend or terminate the Subcontract Work, in whole or in part, G&R shall so notify Subcontractor in writing. Upon receipt of said notice, Subcontractor shall immediately suspend the Subcontract Work. In the event of suspension or stopped by Owner, G&R's liability to Subcontractor is limited to the extent of G&R's recovery on the Subcontractor's behalf under G&R's Prime Contract with the Owner.

**ARTICLE 10
ARBITRATION**

10.1 Arbitration – All claims, counterclaims, disputed and other matters in questions between Subcontractor and G&R arising out of or relating to this Subcontract shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties agree otherwise. The arbitrations will not have jurisdiction to consider any claim for punitive damages. This provision shall be specifically enforceable in any court of competent jurisdiction.

10.1.1 Notice of a demand for arbitration shall be fixed in writing with the other party to this Subcontractor and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall a demand for arbitration be made after the date when the applicable statute of limitations would bar institution of a legal or equitable proceeding based on such claim, dispute or other matter in question.

10.1.2 No arbitration arising out of or related to this Subcontract shall include, by joinder, consolidation or other manner and person not a party to this Subcontract, except for the G&R subcontractors or Owner who may be joined at G&R's sole election. Subcontractor hereby consents to the inclusion of other parties by joinder, consolidation or otherwise should G&R so elect.

10.1.3 The award rendered by arbitrators shall be final and judgment entered upon it in accordance with applicable law in any court having jurisdiction thereof.

10.1.4 Subcontractor shall carry on the Subcontract Work and maintain its progress during any arbitration proceeding.

10.1.5 This Article 10 shall survive completion or termination of this Subcontract.

10.1.6 THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.

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**ARTICLE 11
MISCELLANEOUS**

11.1 Successors and Assigns – This Subcontract shall be binding on the successors, assigns and legal representatives of Subcontractor and G&R. Subcontractor shall not assign, sublet or transfer an interest in the Subcontract without the written consent of G&R nor shall Subcontractor assign any moneys due or to become due hereunder without the previous written consent of G&R.

11.2 Severability and Waiver – The partial or complete invalidity of any one or more provisions of the Subcontract shall not affect the validity or continuing force and effect of any other provisions. The failure of G&R to insist, in any one or more instances, upon the performance of any of the terms and conditions of this Subcontract or to exercise any right herein, shall not be constructed as a waiver or relinquishment of such terms, conditions or rights.

11.3 Governing Law – This Subcontract shall be governed by the law in effect at the location of this Project.

11.4 Notice – Any notice required shall be written and sent to each party's local business address. Notice is effective on the date of receipt.

11.5 Independent Contractor – Subcontractor is an independent contractor. No contractual relationship shall exist between Owner and Subcontractor.

11.6 Equal Employment Opportunity – Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or handicap and further agrees not to engage in any unlawful employment practices.

11.7 Subcontract Execution - By execution of this Subcontract Agreement, the Subcontractor acknowledges that he has reviewed and/or obtained all documents and exhibits referenced herein.

SUBCONTRACTOR

By: _____ Date _____
Signature

Print Name & Title

GIBBS & REGISTER, INC.

By: _____ Date _____
Signature

Title: Ted Ferguson, Vice President

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Exhibit A to Subcontractor Services Agreement Gibbs & Register, Inc. Field Safety Brochure

Rules:

1. **HARD HATS** shall be worn at ALL times while the employee is working on the job site.
2. **SHOES** must be substantial leather shoes or boots. Canvas or tennis shoes are not allowed
3. **PROPER CLOTHING** shall be worn at all times while working. Long pants and shirts are mandatory. Cut-offs, shorts, half-shirts or clothing of this type are not allowed. Welders shall wear the proper protective clothing for their jobs.
4. **SAFETY GLASSES** must be worn in designated areas and when performing tasks where the risk of eye injury is probable. Safety glasses shall be worn when breaking concrete, using pipe, demo or concrete saws, grinding, torch work, etc. If there is a possible chance for eye injury, wear safety glasses.
5. **EAR PROTECTION DEVICES** will be available from your supervisor when the noise level becomes dangerous and/or irritatingly noisy.
6. The use of **INTOXICANTS** (alcoholic beverages) or **CONTROLLED SUBSTANCES** (drugs/narcotics) at the work site, prior to work time, or during lunch break is strictly prohibited
7. **VEHICLES/EQUIPMENT** will be driven only by authorized persons. Unauthorized riders will not drive or ride in company vehicles/equipment. No person is authorized to drive a company vehicle/equipment while under the influence of drugs or alcohol.
8. **SEAT BELTS** must be worn by the driver and all passengers of the vehicle. There are **NO EXCEPTIONS TO THIS RULE.**
9. **LADDERS** will be used in all excavations over four feet deep and will extend three feet over the top of the excavations and be tied off to prevent the ladder from falling. Extension ladders are not to be separated, shall have ladder feet set on a secure surface and shall be "tied off" at the top.
10. **GAS CYLINDERS** shall be capped and secured in an upright position whether empty or full. Oxygen and acetylene shall be stored at least TWENTY (20) FEET apart or at least separated by a fire wall when not in use. Never use tape to repair a leaking hose.
11. **HORSEPLAY** of any kind is strictly forbidden.
12. **INJURIES** of any kind/type must be reported immediately to the supervisor. Prompt FIRST AID or medical attention will be given to even the slightest injury.
13. **ACCIDENT REPORTING – ACCIDENTS** involving company vehicles / equipment are to be reported immediately to the Safety Department by utilizing the accident report form. If there is another party involved, secure all the information regarding damage, injuries, witnesses, physical description of what happened, when and how. Secure names, addresses, phone numbers, and other information available on everyone involved.
14. **CEMENT BURNS** are a constant hazard, particularly in warm weather. Wear GOGGLES when handling cement. Concrete inside a boot or glove will give you a severe burn under the right conditions. Protect the body from fresh concrete at all times.
15. Projecting **NAILS** shall be bent over or removed from lumber.
16. **GASOLINE** equipment shall not be refueled when running.
17. Never enter a **CONFINED SPACE/EXCAVATION** until you check with your supervisor. Never enter an unshored excavation over 4 feet deep unless the slopes are laid back.
18. No employee other than the operator shall ride on loaders, backhoes, or other moving equipment.

SAFETY MEETINGS:

Field Safety meetings will be attended by all employees without exception. Employees will sign the proper form to show that they have attended. These forms will be returned to their supervisor and kept on file.

Meetings will be conducted by the supervisor in charge of each area of crew. Employees are encouraged to actively participate in meetings.

A minimum of one weekly meeting is required for all employees, but can be more, if the topic of discussions warrants it. The topics should cover the possible pitfalls faced in everyday jobs and special attention should be given to areas that have been a problem in the past.

HOUSEKEEPING:

All employees are responsible for maintaining a clean safe job site. No trash or debris will be allowed to accumulate in or around the work areas, in buildings, vehicles, equipment, yard areas or the job sites in general.