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SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (herein referred to as "Agreement"), made this _____ day of _____, 20____ between **Advanced Construction**, and _____ (hereinafter referred to as "Subcontractor").

I - SUBCONTRACT

Subcontractor agrees to perform all services generally performed by the Subcontractor in Subcontractor's line of business, including, but not limited to, the following:

Subcontractor further agrees to furnish all materials and perform all work described herein, all in accordance with the terms, conditions and specifications of the General Contract, Accepted Proposal or this Agreement.

II - DEFINITIONS

1. General Contract. The Contract between *Advanced Construction*, as prime contractor and the owner or owner's representative.
2. Accepted Proposal. *Advanced Construction*, proposal as to the work to be done and the amount that the work will cost that has been agreed to by the owner or owner's representative.
3. Allied Operations. Operations by *Advanced Construction*, and all other subcontractors that are being performed at the specific job site.

III - INDEPENDENT SUBCONTRACTOR STATUS

Advanced Construction, and the Subcontractor intend that an independent contractor relationship will be created by this Agreement. *Advanced Construction*, is interested only in the results to be achieved while the conduct and control of the work will lie solely with the Subcontractor. Subcontractor is not to be considered as an agent or employee of *Advanced Construction*, for any purpose and the employees of Subcontractor are not entitled to any of the benefits that *Advanced Construction*, provides for its employees. It is understood that *Advanced Construction*, does not agree to use Subcontractor exclusively for the type of work that is described in I - SUBCONTRACT above.

IV - COMMENCEMENT DATE

Subcontractor agrees to start performance of the awarded work within a reasonable length of time after notification by *Advanced Construction*. Subcontractor agrees to use due diligence in the completion of such work and to complete such work in accordance with the agreed upon completion date (Weather Permitting) listed on the Labor Specification/Pricing Form and the program of Allied Operations of *Advanced Construction*, and other Subcontractors, if any. Subcontractor has sole control of the manner and means of performing the work specified in the General Contract or Accepted Proposal and shall complete it according to its own means and methods of work.



V - FAILURE OF PERFORMANCE

If the Subcontractor, at any time, fails in the performance of the terms, stipulations and agreements of the General Contract, Accepted Proposal or this Subcontractor's Agreement or fails to use due diligence in the work awarded them, so as to interfere with or in any way impede Allied Operations of *Advanced Construction*, and other Subcontractors, this will be a failure of performance. Failure of performance will rest solely in the judgment of *Advanced Construction*, which will provide notice to anyone representing the Subcontractor at the job site or Subcontractor's place of business. Such notice will state the nature of the violation of the Agreement or contracts. If the failure is continuing for two (2) days after notice to the Subcontractor, *Advanced Construction*, may precede thereupon to complete the work under the terms of the General Contract, Accepted Proposal or Subcontractor Agreement at the cost and expense of Subcontractor. *Advanced Construction*, may re-sublet the work, and any monies due the Subcontractor on that project will be held until the Subcontractor's portion of the project has been completed by *Advanced Construction*, or a new Subcontractor. These monies will be paid to *Advanced Construction*, or the new Subcontractor for the work done.

Subcontractor further agrees that if Subcontractor should delay the material progress of the work so as to create any damage or cost overage for which *Advanced Construction*, shall become liable, then the Subcontractor shall indemnify *Advanced Construction*, for the amount of any damages so caused.

VI - NEGATION OF JOINT VENTURE OR PARTNERSHIP

In entering into and complying with Agreement, Subcontractor is at all times performing as an independent contractor. Nothing in this Agreement shall constitute or be construed as a creation of a partnership or joint venture between Subcontractor and *Advanced Construction*, or their successors or assigns.

VII - CONSIDERATION

Advanced Construction, shall pay the Subcontractor for performance of the work described within the General Contract, Accepted Proposal or Subcontractor's Agreement, subject to additions and deductions agreed upon in writing by the Subcontractor and *Advanced Construction*.

VIII - TERMS OF PAYMENT

Subcontractor will be paid bi-weekly. Payments will consist of ninety-five (95%) percent of all labor and materials which have been performed by the Subcontractor on the job site, shall retain the remaining **five (5%)** percent until forty-five (45) days after work has been fully completed and delivered and accepted by the Owner. All progress payments or invoices are to be turned in to *Advanced Construction's* Project Manager, by 9:00 a.m. each Friday for inspection. Payment will be made two weeks from receipt of invoice unless inspection has failed. Payment will only be approved for the percentage of work completed by the turn in date. All Subcontractors' draws are subject to fund availability.

All invoices must include Subcontractor information: name, address, contact number, invoice number, work order/job number, amount invoicing for and a detailed list of work performed. Draws are only permitted for actual materials installed (If materials are returned, these quantities will be deducted from the Subcontractor invoice). A pay check schedule will be supplied to the subcontractor by *Advanced Construction*.

Week 1 - Friday	Week 2 - Friday	Friday Week 3	Week 4 - Friday
Invoice Turned in by 9 a.m.	Work Inspected	Pay Approved - Invoice Submitted by PM. 95% paid (Net 15)	
Week 5 - Friday	Week 6 - Friday	Week 7 - Friday	Week 8 - Friday
		5% Retainage paid from week 1	



IX - INDEMNIFICATION

Subcontractor shall indemnify, hold harmless and defend *Advanced Construction*, from and against any and all costs, expenses (including reasonable counsel fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind and asserted by or on behalf of any person or governmental authority, arising out of or in any way connected with, *Advanced Construction*, shall not be liable to Subcontractor on account of (1) any failure by Subcontractor to perform any of the agreements, terms, covenants or conditions of the General Contract, Accepted Proposal or this Subcontractor Agreement required to be performed by Subcontractor, (2) any failure by Subcontractor to comply with any statutes, ordinances, regulations or orders of any governmental authority, or (3) any accident, death or personal injury, or damage to or loss or theft of property, with shall occur performing under the General Contract, Accepted Proposal or the Subcontractor's Agreement regardless of whether such liability, claims, demands, damages and costs were caused in whole or part by *Advanced Construction*, or the concurrent negligence of *Advanced Construction*, or any other person or entity.

X - WARRANTY

Subcontractor shall warrant all work performed by Subcontractor for one (1) year from date of completion of the job. This does not include normal "wear and tear". Subcontractor shall satisfactorily remedy any and all deficiencies or problems within three (3) days of written notice from *Advanced Construction*. If Subcontractor fails to remedy the deficiencies or problems within three (3) days of written notice *Advanced Construction* reserves the right to preceed thereupon to complete the work at the cost and expense of Subcontractor (this includes any interior damages that may occur as a result of a faulty workmanship on the exterior).

XI - INSURANCE REQUIREMENTS

Subcontractor shall furnish a Certificate of Insurance, which fully complies with Contractor's insurance requirements prior to starting work. Evidence of such insurance coverage is to be furnished to *Advanced Construction*, when an application is submitted by a Subcontractor and thereafter, once a year.

- **Workers' Compensation and Employers Liability Insurance** Worker's Compensation insurance shall be provided as required by Ohio Law. Subcontractor's insurance carrier shall waive right of subrogation against Romero Sales, LLC d/b/a Advanced Construction, the Owner and all other indemnitees named in the Contract Documents, and subcontractor's insurance policies shall contain an endorsement requiring such waiver of subrogation.
- **General Liability Insurance.** Subcontractor shall carry Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

The limits of liability shall be not less than the amounts required of Subcontractor under the Contract Documents, but in no event less than:

- \$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
- \$1,000,000 for personal injury liability
- \$1,000,000 aggregate for Products-Completed Operations
- \$2,000,000 general aggregate

The general aggregate limit shall apply separately to Subcontractor's work under this Agreement.

*The "Occur" box and the "Contractual Liability" box must be checked.

Certificate Holder must be shown as:

Romero Sales, LLC d/b/a Advanced Construction
251 Outerbelt Street, Columbus, Ohio 43213

- **Additional Insured Endorsement.** *Romero Sales, LLC d/b/a Advanced Construction*, its officers, directors and employees; the Owner; their directors, officers and employees and any other parties required by owner shall be named as



additional insureds under the Comprehensive General Liability or Commercial General Liability policy for any liability arising out of the performance of work.

Claims Made Policy Form Provisions. Subcontractor shall not provide general liability insurance under any Claims Made General Liability form without the express prior written consent of Contractor.

- **Automobile Liability Insurance.** Subcontractor shall carry Automobile Liability insurance, including coverage for all owned, hired and non-owned vehicles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Certificates of insurance, as evidence of the insurance required by this Agreement and including the required “additional insured” and “primary insurance” endorsements, shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without 30 days prior written notice to the Contractor.

In the event Subcontractor does not comply with the insurance requirements outlined in this Agreement, Contractor may, at its option, provide such coverage to protect its interests and charge the Subcontractor for the cost of that insurance, or terminate this Agreement.

The required insurance shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities by it in this Agreement. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

Sub-subcontractor Requirements. Subcontractors shall require that any and all tiers of its subcontractors shall maintain insurance in like form and amounts including the additional insured endorsement naming Contractor and Owner.

“Modified Occurrence” Policy. “Modified Occurrence” insurance policies will not be accepted under any circumstances.

XII - BOUND TO OWNER

Subcontractor shall be bound to *Advanced Construction*, in the same manner as *Advanced Construction*, is bound to the Owner to the extent of the portion of the work covered under the General Contract/Accepted Proposal.

XIII - POLICIES

Subcontractor shall abide by the Safety Policy and Subcontractor Policy that has been read and signed simultaneously with this Agreement.

XIV - LIEN WAIVER

Subcontractor must sign a lien waiver in order to receive payment for work that has been completed.

XV - GOVERNING LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio.

XVI - LEGAL ACTION

If any legal action is instituted to enforce this Agreement or any part of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's and court costs from the other party.



XVII - ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind proceeding the date of this Agreement shall not be binding upon any party except to the extent incorporated in this Agreement.

XVIII - MODIFICATION AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

XIX - SECTION HEADINGS

The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

XX - SEPARABILITY

If any of the provisions of this Agreement shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall in no way be affected or impaired and such remaining provisions shall remain in full force and effect.

XXI – CURRENT CLIENT NONSOLICITATION

Subcontractor in no way is permitted to solicit, otherwise offer to provide or actually provide to any client, directly or indirectly any Services, that are the same, similar or reasonably related to the Services provided hereunder, without the prior written consent of Company. It is at the sole discretion of *Advanced Construction* to determine the current client relationship status. The parties agree that a violation of the foregoing noncompetition and nonsolicitation provisions would cause irreparable harm for which there may be no adequate remedy at law. Violation of this clause will lead to legal action to regain all lost revenues. Subcontractor will be responsible for all legal fees. This clause stands into effect for one year after each and or any project(s) have been performed. This clause goes into effect starting on the date of the most recent project that has been completed *for Advanced Construction*.

XXII – CONFIDENTIALITY AGREEMENT

It is understood and agreed to that the below identified discloser of confidential information may provide certain information that is and must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, it is agreed that

1. The Confidential Information to be disclosed can be described as and includes:

Technical and business information relating to Discloser's proprietary ideas, patentable ideas copyrights and/or trade secrets, existing and/or contemplated products and services, software, schematics, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.

2. The Recipient shall limit disclosure of Confidential Information within its own organization to its directors, officers, partners, members, employees and/or independent contractors (collectively referred to as "affiliates") having a need to know. The Recipient and affiliates will not disclose the confidential information obtained from the discloser unless required to do so by law.
3. This Agreement imposes no obligation upon Recipient with respect to any Confidential Information (a) that was in Recipient's possession before receipt from Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party not owing a duty of confidentiality to the Discloser; (d) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, Discloser; or (e) is independently derived by Recipient.



4. This Agreement states the entire agreement between the parties concerning the disclosure of Confidential Information. Any addition or modification to this Agreement must be made in writing and signed by the parties.

XXIII – DURATION OF AGREEMENT

This Agreement expires and must be renewed every twelve (12) months from the date of this signed agreement.

In witness whereof, the Parties hereto have duly executed this Agreement on the date indicated in the first paragraph.

SUBCONTRACTOR: By: _____ Date _____

Printed Name: _____

Advanced Construction: By: _____ Date _____

Printed Name: _____

Advanced Construction



SUBCONTRACTOR INFORMATION

Tax ID # _____

Name: _____

DBA (if applicable): _____

Address: _____

City: _____ State _____ Zip _____

Phone #: _____ Phone # _____

Email Address: _____

Years in Business: _____ Years at this Address: _____

Driver's License Number: _____ State _____

Social Security Number: _____

Bank Reference: _____

Account Number: _____

Certificates of Insurance or Appropriate Waivers and Workers Compensation must be on file in our office prior to any work starting.

List lead supervisory personnel that you will assign to any of our job sites

Name

Phone Number

Vehicle Make & License

Business References (Minimum of Three Jobs within the Local Area completed in the past 12 months):

Name

Phone#

Name _____ Phone _____

Address _____ Contact _____

City _____ State _____ Zip _____

Name _____ Phone _____

Address _____ Contact _____

City _____ State _____ Zip _____

Name _____ Phone _____

Address _____ Contact _____

City _____ State _____ Zip _____