



SUBCONTRACTOR AGREEMENT

This Agreement is made this ____ day of _____ 20__ between **Lineal Contracting, Inc** ("Contractor"), whose mailing address is **2922 Mitchell Road, Bedford, In 47421** and _____ ("Subcontractor") whose mailing address is _____. The work described in Section One below shall be performed in accordance with all plans, specifications and other contract documents attached to or incorporated into the prime contract for the project known as the Project Service Agreements. In consideration of the mutual promises, covenants and conditions set out herein, the receipts, sufficiency and adequacy of which are hereby acknowledged by Contractor and Subcontractor, the parties hereto agree as follows:

Section One: SCOPE. Subcontractor agrees to perform services as described Attachment A (at the end of this document)

Section Two: PRICE. Unit Price Schedule shall be listed on Attachment B (at the end of this document).

Section Three: PAYMENT, RETAINAGE, AND LIQUIDATED DAMAGES: Whatever amount of work is done for a 5 day (1 week period) can be invoiced the following week. After inspection of work for length, depth, etc. Payment will be made in 6 business days. Retainage of 10% will be withheld and paid within 6 days of complete of the entire Lineal Contracting, Inc. job and PO with Lineal Contracting, Inc.'s customer. Should the Subcontractor neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then in that event and in view of the difficulty of estimating with exactness damages caused by such delay, Lineal Contracting, Inc. shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Subcontractor the sum of Five Hundred (\$500.00) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from Lineal Contracting, Inc. to the Subcontractor is insufficient to pay in full any such liquidated damages, the Subcontractor shall pay to Lineal Contracting, Inc. the amount necessary to effect such payment in full: Provided, however, that Lineal Contracting, Inc. shall promptly notify the Subcontractor in writing of the manner in which the amount retained, deducted, or claimed as liquidated damages was computed.

Section Four: REIMBURSEMENT FOR EXPENSES. Contractor shall not be liable to Subcontractor for any expenses paid or incurred by Subcontractor unless agreed in writing.

Section Five: EQUIPMENT TOOLS OR SUPPLIES. Subcontractor shall be responsible for supplying tools, equipment or supplies to complete this project.

Section Six: DELEGATION OF DUTIES: Subcontractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Subcontract without the prior written approval of Contractor.

Section Seven: DUTIES OF SUBCONTRACTOR. It shall be the responsibility of Subcontractor to perform Aerial Construction as required to complete the project as directed by the Contractor. Subcontractor shall furnish certificate of insurance with proper coverages for Contractor's as follows:

- General Liability - \$2,000,000 Aggregate/ \$2,000,000 Products Aggregate
- General Liability - \$1,000,000 per Occurrence
- Auto - \$1,000,000
- Workers Compensation - \$1,000,000
- Umbrellas - \$5,000,000
- Contractor is to be named as additional insured on all Subcontractor Policies and provide Contractor with a Certificate of Insurance with the following wording:

Lineal Contracting Inc (Contractor), including subsidiaries, affiliates, officers, employees, and agents are included as additional insured on a primary noncontributory basis for auto and general liability, without reduction or right of offset or contribution on account of any insurance or self-insurance maintained by the additional insured. A waiver of subrogation is also applied to all policies including workers compensation and employer's liability in relation to any work being performed for or in-conjunction with and agrees to hold harmless and indemnify the additional insured from any and all liability, loss, actions, costs, including attorney fees for any claim or lawsuit presented, arising from the negligent or intentional acts, errors or omissions for any services provided directly or indirectly. Certificate must specify that no XCU exclusion applies to General Liability and written on a "Per project" basis. Excess or Umbrella should be indicated as follow form. A 30 Day Notice of Cancellation to be included on all policies. Certificates should also be accompanied by endorsement CG 20 10 (7/04 edition) and CG 20 37 (7/04 edition), or their equivalent.

- The terms of the above referenced insurance policies must cover the entire period when any work is being performed under this Contract in accordance with the terms thereof, and until final acceptance of work by the Contractor. Proof of insurance

coverage must be provided to Contractor prior to commencement of any work and prior to any payments being made under this agreement.

Subcontractor warrants and represents that it is knowledgeable, well versed and experienced in the field of expertise in which subcontractor is or will be working pursuant to this agreement. Subcontractor agrees to be bound by and perform in accordance with all applicable terms, conditions set forth in the purchase with respect to the work to be performed, the terms of which being incorporated into this contract by reference.

Subcontractor shall ascertain that all work is performed in a quality basis, as set forth in the contract, and as designated by the Contractor. Should Subcontractor's work become substandard or not satisfactory to either the owner or the Contractor or should the Subcontractor decide to give up the project, this Agreement may be terminated by the Contractor by giving Subcontractor immediate notice in writing and in any event, Subcontractor shall cease operations immediately and leave the project.

Subcontractor shall exercise the same degree of care, skill and diligence in the performance of the work as is ordinarily exercised by other contractors under similar circumstances. Subcontractor warrants the work against all deficiencies and defects in materials, other than materials supplied by Contractor, and workmanship, and shall immediately repair or replace any defective work and any other work and materials that Subcontractor damages or destroys in repairing or replacing defective work, without any additional compensation to Subcontractor. All work shall be performed to the satisfaction of Contractor and Owner, whose determination shall be final and binding on Subcontractor. Subcontractor shall cooperate and coordinate for the application and obtaining of any permits, licenses, or other authorizations necessary for Subcontractor to perform the work, copies of which shall be provided to Contractor upon request. Subcontractor shall remove at its expense any trash, debris and surplus materials left over or resulting from the performance of the work. Subcontractor will be responsible for the condition and safekeeping of any tools, equipment, vehicles, materials or other tangible assets provided to Subcontractor by Contractor, Owner or another Subcontractor in connection with the work, and shall return such assets to their rightful owner, to the extent not used in completing the work, upon completion of the work.

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Subcontractor. All work shall be performed to the satisfaction of Contractor and Owner, whose determination shall be final and binding on Subcontractor. Subcontractor shall cooperate and coordinate for the application and obtaining of any permits, licenses or other authorizations necessary for Subcontractor to perform the work, copies of which shall be provided to Contractor upon request. Subcontractor shall remove at its expense any trash, debris and surplus materials left over or resulting from the performance of the work. Subcontractor will be responsible for the condition and safekeeping of any tools, equipment, vehicles, materials or other tangible assets provided to Subcontractor by Contractor, Owner or another Subcontractor in connection with the work, and shall return such assets to their rightful owner, to the extent not used in completing the work, upon completion of the work.

Subcontractor and its employee will observe all safety, nondiscrimination, equal employment, drug and alcohol, business ethics and other rules and policies of Contractor and Owner and all applicable laws, rules and regulations of any governmental authority in performing the work, including without limitation those relating to safety and health, the environment and labor employment. Any accident is to be reported to Contractor within twelve (12) hours of occurrence.

Section Eight: TAX DUTIES. Subcontractor understands that Subcontractor is responsible to pay according to law, Subcontractor's income tax. If Subcontractor is not a corporation, Subcontractor further understands that Subcontractor may be liable for self-employment tax to be paid by Subcontractor according to law. Neither State nor Federal nor local income tax nor payroll tax of any kind shall be withheld or paid by Contractor on behalf of Subcontractor or to the employees of Subcontractor. Subcontractor shall not be treated as an employee with respect to the services performed hereunder for Federal or State tax purposes. Subcontractor shall complete and sign a W-9 form to be kept on file by Contractor prior to any payments being made under this agreement.

Section Nine: INDEPENDENT CONTRACTOR. The parties agree that Subcontractor is an independent Contractor and not an employee, agent, joint venture or partner of Contractor and nothing in this Agreement shall be construed as creating a fiduciary relationship or any other relationship between Subcontractor and Contractor, or between any employee or agent of Subcontractor and Contractor. Subcontractor and its employees shall not represent that Subcontractor and its employees have any relationship with Contractor other than as independent Contractors pursuant to this Agreement. Contractor will not be obligated by or have any liability under any agreements, representations or warranties made by Subcontractor or his employees which are not expressly authorized hereunder or in writing signed by Contractor. It is specifically contemplated and agreed between the parties that Subcontractor shall perform the work as an independent Contractor as that term is defined in the Internal Revenue Code of 1986 as amended.

Section Ten: INDEMNIFICATION. Subcontractor shall indemnify, defend and hold harmless Contractor and Owner the respective officers, directors, stockholders, affiliates, employees, agents, subcontractors, independent contractors and other representatives

(collectively the “indemnities”) from and against all claims, damages, liabilities, losses, injuries and expenses incurred or suffered, directly or indirectly, by the indemnities and arising out of or resulting from, directly or indirectly, the performance or quality or lack thereof of the work or the materials supplied by Subcontractor from any breach of this agreement by Subcontractor, or from any other action or omission of Subcontractor, including, in all such cases, Subcontractor’s officers, directors, stockholders, affiliates, employees, agents, subcontractors, independent contractors, invitees or others under its direction or control. Subcontractor agrees to waive any rights of subrogation against Contractor. Subcontractors insurance will be primary and non-contributory to any insurance carried by Contractor.

Section Eleven: WARRANTY. The Subcontractor will be required to warrant work completed on of the project for one calendar year from the date of the final acceptance.

Section Twelve: CONTRACTOR TERMINATION. Without cause, Contractor may terminate this Agreement after giving fifteen (15) days prior written notice to Subcontractor of its intent to terminate without cause. The parties shall deal with each other in good faith during the fifteen-day period after any notice of intent to terminate without cause has been given. With reasonable cause, either party may terminate this agreement effective immediately upon the giving of written notice for termination for cause. Reasonable cause shall include material violation of this agreement and any act exposing the other party to liability to others for personal injury or property damage.

Section Thirteen: SUBCONTRACTOR DEFAULT AND TERMINATION. Should Subcontractor at any time refuse or neglect to supply sufficient skilled workers, equipment or material of the proper quality and quantity, or fail in any respect to prosecute the work with promptness and diligence, or cause by any act or omission the stoppage or delay of or interference with or damage to the work the Contractor or of any other contractors or subcontractors on the project, or fail in the performance of any of the terms and provisions of the subcontract documents, or should the Contractor or Owner determine that the work or any portion thereof is not being performed in accordance with the subcontract documents, or should there be filed by or against the Subcontractor a petition in bankruptcy or for an arrangement or reorganization, or should the Subcontractor become insolvent or to be adjudicated a bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a Court Order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default hereunder by Subcontractor, the Contractor shall have the right, in addition to all other rights and remedies provided by the subcontract documents or by law:

- (A) to perform and furnish itself or through others any labor and material necessary to complete the work and to deduct the cost thereof, including the Contractor’s overhead and profit at the agreed rate of 20%, from any money due or to become due the Subcontractor under the subcontract and
- (B) to terminate the subcontract, enter upon the premises and take possession, for the purpose of completing the work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which the Subcontractor hereby transfers,

assigns and sets over to the Contractor for such purpose, and to complete and engage others to complete the work, and provide all labor, services, materials, equipment and other items required, therefore. Upon such termination of the subcontract, Subcontractor shall not be entitled to receive any further payment under the subcontract until the work shall be wholly complete to the satisfaction of the Contractor and the Owner and shall have been accepted by them. Upon such acceptance if the unpaid balance of the subcontract sum exceeds the cost and expenses incurred by the Contractor, including overhead and profit at the rate of 20%, in completing the work, the Contractor shall pay such excess to Subcontractor, but if such cost and expense, including overhead and profit at the agreed rate of 20%, shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor. Such cost and expense shall include not only the cost of completing the work to the satisfaction of the Contractor and the Owner and of performing and furnishing all labor, service, materials, and equipment and the estimated value of unfulfilled warranty obligations and other items, but also shall include all loss damage, cost and expense, including attorney's fees and disbursements sustained, incurred or suffered by reason of Subcontractor's default. In the event of default by Subcontractor under the subcontract document, in addition to all remedies available at law or in equity, the contractor specifically reserves the right to recover from Subcontractor all liquidated damages, direct and indirect damages, consequential damages, attorney's fees and other expenses incurred by the Contractor under the Owner/Prime contract and attributable in whole or in part to Subcontractor's default.

Section Fourteen: ENTIRE AGREEMENT. This agreement represents the entire agreement between Contractor and Subcontractor and supersedes any prior written or oral representations. Subcontractor and its Subcontractors are bound by the prime contract and any contract documents incorporated therein insofar as they relate in any way, directly or indirectly, to the work covered by this agreement.

Section Fifteen: DELAY. In the event that Subcontractor's work is delayed for any reason, including acts of the Contractor, Subcontractor's sole remedy shall be an extension of time equal to the period of delay, provided Subcontractor has given Contractor written notice of the commencement of the delay within 48 hours of its occurrence. In the event that contractor, in its sole discretion, should seek compensation from the owner as a result of any delay, Subcontractor shall be entitled to an equitable portion of any amount recovered by Contractor minus an aliquot share of the cost of pursuing said claim. This provision shall not be construed to require Contractor to pursue any delay claim against the Owner/Prime of any other party.

Section Sixteen: CHANGES IN WORK. Subcontractor shall make no changes in the work covered by this agreement without written direction from the contractor. Subcontractor shall not be compensated for any change which is made without such written direction. No changes in the work covered by this agreement shall exonerate any surety or any bond given in connection with this agreement.

Section Seventeen: INSPECTION OF WORK. Subcontractor shall make the work accessible at all reasonable times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used

or incorporated into the Subcontractor's work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the architect, Owner and Contractor.

Section Eighteen: DISPUTE RESOLUTION. All claims, disputes and other matters in question arising out of or relating to this subcontract with a breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by

which have been waived by the making or acceptance of final payment, shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. Notwithstanding other provisions in the subcontract or choice of law provisions to the contrary, this agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U. S. C. ss1 et. seq. which shall not be superseded or supplemented by any other arbitration act, statute or regulation. The award entered by the arbitrator shall be final and judgment may be entered upon it in accordance with the Federal Arbitration Act in any Court having jurisdiction. In case of a dispute, the Subcontractor agrees not to cause partial or total suspension of the subcontract work and Contractor may at its discretion and without prejudice escrow, pay or set off against other claims all or a portion of the funds in dispute. Subcontractor hereby waives all past, present and future liens and shall not have the right to file or record any liens or judgments of record in any jurisdiction prior to obtaining a judgment as set forth above.

Section Nineteen: LEGAL JURISDICTION/VENUE. The Parties (a) consent to the exclusive jurisdiction and venue of the federal and state courts located in the State of Indiana, Lawrence county, in any action arising out of or relating to this Agreement including the jurisdiction and venue in connection with Section Eighteen DISPUTE RESOLUTION; (b) both Parties waive any objection they might have to jurisdiction or venue of such forums or that the forum is inconvenient; and (c) agree not to bring any such action in any other jurisdiction or venue to which either party might be entitled by domicile or otherwise.

Section Twenty: NONDISCLOSURE NONCOMPETE. Subcontractor acknowledges that information concerning or related to the sales, costs, profits, pricing methods, customer list, equipment, etc. of Contractor and/or Contractor's products and services are proprietary to Contractor and/or its customers and will be kept in strictest confidence by Subcontractor. The Subcontractor recognizes that all of Contractor's Contacts, Agents, Customers (herein after known as Proprietary Resources) which Contractor shall introduce to Subcontractor are the proprietary property of the Contractor. The Subcontractor agrees that it shall not circumvent Contractor in making separate agreements with, contacting or consulting with any of the Contractor's Proprietary Resources which Contractor may introduce to the Subcontractor without Contractor's express written consent. The Subcontractor agrees that if Contractor shall introduce any of these Proprietary Resources to the Subcontractor and if said contact occurs or agreements are made between the Subcontractor and the Contractor's Proprietary Resources without Contractor's prior written consent, that Contractor will suffer substantial damages which cannot be adequately estimated and that Contractor would not have an adequate remedy at law and would be irreparably harmed in the event that the provisions of this paragraph were not performed in accordance with their specific terms or were otherwise breached. Accordingly, Subcontractor agrees that Contractor shall be entitled to equitable relief

including injunction and specific performance without necessity to post bond or proving any special damages. Seeking equitable relief shall not be the exclusive remedy of Contractor for such breach, and Contractor may concurrently seek any other relief at law. This promise not to circumvent Contractor and to maintain confidentiality of Contractor's Confidential Information shall survive for a period of two (2) years after termination of this Agreement.

Section Twenty-One: SEVERABILITY. If any provision of this Subcontract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provisions shall be deemed to be written, construed and enforced as so limited.

Section Twenty-Two: OTHER PROVISIONS.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Section Twenty-Three: BINDING. This agreement shall be binding upon the heirs, executors, administrators, assigns and successors in interest to the parties hereto.

IN WITNESS WHEREOF the parties hereto have affixed their names and seals as of the date first written above.

CONTRACTOR:

Ryan Sullivan, President

Witness

SUBCONTRACTOR:

Name, Title

Witness

ATTACHMENT A

SCOPE OF WORK:

Bore 1 or 2-2" HDPE ducts with trace wire.

Bore must be a minimum of 4' in depth with no exception without permission from contractor

Additional pay for locating utilities in roadway.

ATTACHMENT B

Bore 1-2" duct - \$6.00 per foot

Bore 2-2' duct - \$7.25 per foot

Bore in Rock - \$20.00 per foot
(with permission) (This isn't an adder to the \$6.00 per foot)