

Project: Williamson County Community Service Buildi  
Contract: 9914-01  
J.C.C.#: 02 000 S

RCR BUILDING CORPORATION

632 Melrose Avenue  
Nashville, TN 37211  
(615) 242-6868

DEPOSITION  
EXHIBIT

#1 4/17/01  
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THIS SUBCONTRACT AGREEMENT, made by and between RCR BUILDING CORPORATION of Nashville, Davidson County, Tennessee, hereinafter referred to as "Contractor" and

American Excavators, LLC.

3331 Denning Lane, Spring Hill, TN 37174

doing business as:

hereinafter referred to as "Subcontractor" on this 13th day of April, 1999.

WITNESSETH:

That for the consideration, covenants and agreements hereinafter set forth in this Subcontract Agreement, the parties hereinabove names as follows:

1. The CONTRACTOR has heretofore entered into a written contract with:  
Williamson County

hereinafter called the "Owner" whereby the CONTRACTOR has obligated itself to furnish labor and materials to do certain work under a Project No. 9914 between said CONTRACTOR and the OWNER, which prime contract, together with all specifications, maps, drawings, plans and conditions, and any and all other documents referred to in said prime contract (Hereinafter collectively referred to as the "Contract Documents") are by reference thereto made a part of this Subcontract Agreement as fully as though copied herein, to specifically include Article 5.3 of the General Conditions of the Contract for Construction AIA A201 - 1987 Edition.

2. The SUBCONTRACTOR hereby agrees to furnish all labor and materials and to perform all work in accordance with the conditions, specifications, maps, drawings and plans and undertaking between the CONTRACTOR and the OWNER and the CONTRACTOR agrees to pay the SUBCONTRACTOR the Contract Price of:

Two hundred thirty-three thousand nine hundred forty dollars (\$233,940.00)

for the performance of this Subcontract Agreement. The work to be performed by SUBCONTRACTOR is as detailed on Page 2.

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The work to be performed by SUBCONTRACTOR is as follows:

1. All items herein listed and as shown on drawings for Williamson County Community Service Building as prepared by Thomas, Miller & Partners and dated January 29, 1999.
2. All items herein listed and as specified in Project Specifications as prepared by Thomas, Miller & Partners and dated January 29, 1999.
3. Alternates 1, 2, 4, 5, 6, and 7 are a part of this contract agreement.
4. The following Addendums are a part of this contract agreement.
  - a. Addendum No. 1 dated March 8, 1999.
  - b. Addendum No. 2 dated March 12, 1999.
  - c. Addendum No. 3 dated March 1, 1999.
  - d. Addendum No. 4 dated March 22, 1999.
5. Contract Specifications, Document 00800-Supplementary Conditions, Article 4, Subparagraph 4.5.1 as states " In the event of disputes between Owner and Contractor under this Agreement, every effort shall be made to reach a mutually agreed upon resolution. If a mutual resolution is not reached, binding, or no binding, arbitration is not an option.", is a part of this contract agreement between RCR Building Corporation and American Excavators, LLC.
6. Contract Specifications, General Conditions of the Contract for Construction, AIA Document A201-1987, complete as relates to this scope of work.
7. Contract Specifications, Supplementary Conditions, complete as relates to this scope of work.
8. Contract Specifications, List of Drawings, complete as relates to this scope of work.
- 9.. Contract Specifications, Division 1-General Requirements, complete as relates to this scope of work.
10. Contract Specifications, Division 2-Site Work, as follows:
  - a. Section 02120-Soil Erosion and Siltation Control, complete.
  - b. Section 02210-Controlled Blasting, complete.
  - c. Section 02221-Excavating, Backfilling, and Compacting for Structures, complete.
  - d. Section 02230-Site Clearing, complete.
  - e. Section 02260-Excavation Support and Protection, complete.
  - f. Section 02300-Earthwork, complete.
  - g. Section 02510-Water Distribution, complete.
  - h. Section 02530-Sanitary Sewage, complete.
  - i. Section 02630-Storm Drainage, complete.
11. Construction entrance to be provided under this agreement.
12. Tree protection to be provided under this agreement.

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13. Striping and respreading of topsoil to be provided under this agreement.
14. Layout to be provided under this agreement.
15. Soils testing to be provided under this contract.
16. Water lines, sewer lines & roof drains to be within 5' of building.
17. The following fees are included in this agreement.
  - a. Water Plan Review.....\$ 300.00 -
  - b. Water Inspection.....\$ 514.00 -
  - c. Fire Line.....\$ 1,000.00 -
  - d. Water Connection.....\$10,350.00
  - e. Water Access.....\$ 6,900.00
  - f. Water Installation.....\$ 1,500.00 -
  - g. Sewer Plan Review.....\$ 300.00
  - h. Sewer Connection.....\$10,350.00
  - i. Sewer Access.....\$ 6,900.00
  - j. Sewer Installation.....\$ 250.00 -
18. American Excavators, LLC will keep one clean set of drawing on site for as-built purposes. All piping locations will be shown on these drawings, with dimensions from building and/or road given for all pipe locations. All invert elevations for sewer and storm piping, and top of pipe elevations for water piping, shall be plainly marked on the as-built drawings as required.
19. American Excavators, LLC will remove all mud, dirt, etc. from public streets resulting from their equipment and truck activities.
20. Any additional undercutting and refilling of areas due to unsuitable soils will be done for a unit price of \$12.50 per cubic yard.

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3. The SUBCONTRACTOR agrees that it is bound and obligated to the CONTRACTOR by the terms of this Subcontract Agreement and all papers, documents, etc., made a part hereof by reference, and that said obligations liabilities, and responsibilities that said CONTRACTOR by those documents assumes toward the OWNER. This Subcontract Agreement is intended to represent the entire agreement between the CONTRACTOR and the SUBCONTRACTOR, including all negotiations and qualifications regarding the work
4. (a) SUBCONTRACTOR agrees to complete the several portions and all work required herein by the time or times as follows: Start work within 3 days after receiving written notice from the CONTRACTOR. SUBCONTRACTOR must place sufficient equipment and workmen on the job so that his work will progress to the satisfaction of both the CONTRACTOR and OWNER. Coordination of SUBCONTRACTOR'S work with CONTRACTOR and other subs is the responsibility of SUBCONTRACTOR and SUBCONTRACTOR must cooperate with the CONTRACTOR and all other subcontractors so that all work on the project can be completed within the allowable Contract Documents working days.
- (b) If the SUBCONTRACTOR should, in the opinion of the CONTRACTOR, fail to comply with the above, for any reason whatsoever, the CONTRACTOR may give written notice to the SUBCONTRACTOR and the SUBCONTRACTOR shall have three (3) working days within which to comply. If the SUBCONTRACTOR fails to comply within three (3) working days, for any reason whatsoever, the CONTRACTOR shall have the right to:
- (1) take over and use said materials on said job, and/or;
  - (2) employ necessary additional labor and equipment and furnish additional materials to insure compliance with the above and charge all of the expenses thereof against the SUBCONTRACTOR plus 8% for the CONTRACTOR'S overhead. CONTRACTOR may deduct said cost and expenses from funds due or to become due to the SUBCONTRACTOR under this Subcontract Agreement; the SUBCONTRACTOR shall be liable for such deficiency.

The failure of the CONTRACTOR to give notice or to proceed as herein set out on one occasion shall not limit the CONTRACTOR'S rights in any further action of other non-compliance, the CONTRACTOR'S right being a continuing one. This paragraph shall not be construed as a limitation and does not waive or restrict other rights the CONTRACTOR has or may have in or growing out of the Subcontract Agreement.

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5. SUBCONTRACTOR shall furnish all materials and perform all items of work covered by this Subcontract Agreement, and he shall not subcontract, sublet or assign any of the work covered by this Subcontract Agreement without first obtaining the written permission of the CONTRACTOR. The SUBCONTRACTOR will staff the project supervisory and workmen without interruption and to the full satisfaction of the OWNER, ARCHITECT, and GENERAL CONTRACTOR. Job delays caused by work stoppages of any nature shall be the SUBCONTRACTOR'S sole responsibility.

The CONTRACTOR will seek action under Article 4, paragraph (a) and (b) contained herein to assure job progress. The SUBCONTRACTOR shall not assign any amounts due this Subcontract Agreement without prior written approval of the CONTRACTOR to do so.

6. The SUBCONTRACTOR shall make all claims promptly to the CONTRACTOR for additional work, extensions of time, and damage for delays or otherwise, in accordance with the CONTRACT DOCUMENTS, but in no event should claims be made later than 3 days from the occurrence which is the basis of the claim.
7. In carrying out his work, the SUBCONTRACTOR shall take necessary precautions to protect properly the finished work of other trades from damage caused by his operations.
8. The SUBCONTRACTOR shall at all times keep the building and premises clean of debris arising out of the operations of this Subcontract Agreement. Unless otherwise provided, the SUBCONTRACTOR shall not be held responsible for unclean conditions caused by other contractors or subcontractors.
9. The SUBCONTRACTOR warrants that all materials and equipment furnished and incorporated by him in the project shall be new unless otherwise specified, and that all work under this Subcontract Agreement shall be of good quality free from faults and defects and in conformance with the Contract Documents. All work not conforming to these standards may be considered defective. The warranty provide in this Paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
10. The SUBCONTRACTOR agrees that the CONTRACTOR'S equipment will be available to the SUBCONTRACTOR only at the CONTRACTOR'S discretion and on mutually satisfactory terms.
11. The SUBCONTRACTOR shall furnish periodic progress reports on the work as mutually agreed, including information on the status of materials and equipment under this Subcontract Agreement which may be in the course of preparation or manufacture
12. The SUBCONTRACTOR shall make any and all changes in the work from the drawings and specifications of the Contract Documents without invalidating this Subcontract Agreement when specifically ordered to do so in writing by the CONTRACTOR. The SUBCONTRACTOR, prior to the commencement of such changed or revised work shall submit promptly to the CONTRACTOR written copies of the cost or credit proposal for such revised work in a manner consistent with the Contract Documents.

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13. The SUBCONTRACTOR shall cooperate with the CONTRACTOR and other Subcontractors whose work might interfere with the SUBCONTRACTOR'S work, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the Contract Documents, specifically noting and advising the CONTRACTOR of any such interference.
14. The SUBCONTRACTOR shall cooperate with the CONTRACTOR in scheduling and performing his work to avoid conflict or interference with the work of others.
15. The SUBCONTRACTOR shall promptly submit shop drawings and samples as required in order to perform his work efficiently, expeditiously and in a manner that will not cause delay in the progress of the work of the CONTRACTOR or other Subcontractors.
16. The SUBCONTRACTOR agrees that all work shall be done subject to the final approval of the Architect. The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.
17. SUBCONTRACTOR shall be absolutely liable to the CONTRACTOR for all costs incurred in repairs to or replacement of any trade items damaged, lost, stolen, or destroyed by his employees while employed at this project site, including any times during which his employees are engaged in a riot, demonstration, civil commotion or strike.
18. SUBCONTRACTOR shall indemnify for and save CONTRACTOR harmless from all expense incurred, including attorney's fees, as a result of liens placed on the project, whether caused by SUBCONTRACTOR, and sub-subcontractor or supplier thereof. In the event of lien, SUBCONTRACTOR, upon receipt of written notice, shall have ten (10) days to have said lien removed or CONTRACTOR shall have all rights set forth in Paragraph 4, above.
19. The SUBCONTRACTOR shall defend, indemnify and hold harmless the CONTRACTOR and all of his agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the SUBCONTRACTOR'S work under this Subcontract Agreement, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the SUBCONTRACTOR or anyone directly or indirectly employed by him or anyone whose acts he may be liable, regardless of whether it is caused in part by a party indemnified thereunder.
20. The SUBCONTRACTOR shall make no claims for extras or extensions of time or for damages which the CONTRACTOR is not permitted to make to the OWNER and none shall be allowed the SUBCONTRACTOR unless the same be allowed, and to the extent allowed to the CONTRACTOR by the OWNER.

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21. The SUBCONTRACTOR shall, on or before the 20th day of each month, file his estimate of materials and labor furnished for the current month in a format acceptable to the CONTRACTOR. Upon said estimate being certified or accepted as correct by the OWNER, the CONTRACTOR shall pay the amount covered by said estimate to the SUBCONTRACTOR within seven (7) days after the receipt of money covered by said estimate paid the CONTRACTOR by the OWNER. Retainage, however, in an amount equal to ten percent (10%) of each estimate shall be retained by the CONTRACTOR and the same shall not be due and payable to the SUBCONTRACTOR until the SUBCONTRACTOR'S full compliance with this Subcontract Agreement and until thirty (30) days following the receipt of the retainage by the CONTRACTOR from the OWNER. Receipt of payment by CONTRACTOR from OWNER shall be a condition precedent to any payment by CONTRACTOR to SUBCONTRACTOR. SUBCONTRACTOR will furnish a Release of Lien, or other proof of payment satisfactory to CONTRACTOR, from all his subcontractors and/or material suppliers before any progress payment or final payment can be made.
22. SUBCONTRACTOR shall, before commencing operations, furnish to the CONTRACTOR a payment and performance bond in favor of the CONTRACTOR and the OWNER in an amount not less than \_\_\_\_\_ to be executed by a corporate surety acceptable to the CONTRACTOR and the OWNER. The SUBCONTRACTOR shall also furnish the CONTRACTOR two (2) certificates from insurance companies or their duly authorized agents, certifying that the SUBCONTRACTOR is insured to the extent and limits required by the Contract Documents.
23. SUBCONTRACTOR warrants that he is in full compliance with all licensing requirements under applicable Federal, State and Local Law. SUBCONTRACTOR is required to abide by all Local, State and Federal Health and Safety Laws and Regulations and must cooperate 100% with the CONTRACTOR and Project Superintendent. This also applies to subcontractors of SUBCONTRACTORS, materials suppliers and all common carriers making delivery to the job site. The SUBCONTRACTOR shall report within three (3) days to the CONTRACTOR any injury to any of the SUBCONTRACTOR'S employees at the site.
24. SUBCONTRACTOR hereby acknowledges that all payments regarding this Subcontract are subject to prior receipt by the CONTRACTOR of any and all applicable "Material Safety Data Sheets", "M.S.D.S.", as required by law in accordance with "Rights to Know".
25. The CONTRACTOR shall have the same rights against the SUBCONTRACTOR under the Contract Documents and all documents, specifications, conditions, etc., which have been made a part of this Subcontract Agreement by reference thereto. If there shall be any inconsistency between any provision of the Contract Documents between the OWNER and the CONTRACTOR and this Subcontract Agreement, then this Subcontract Agreement shall govern.

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26. Any controversy or claim between contractor and subcontractor arising out of or related to this subcontract, or the breach hereof, shall be settled by arbitration, which shall be conducted in the same manner and under the same procedure as provided in the Prime Contract with respect to claims between the OWNER and the CONTRACTOR, except that a decision by the Architect shall not be a condition precedent to arbitration. If the Prime Contract does not provide for arbitration or fails to specify the manner and procedure for arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Association currently in effect unless the parties mutually agree otherwise.
27. In the event it shall be necessary for the CONTRACTOR to retain legal counsel to enforce any of its rights against the SUBCONTRACTOR hereunder, the SUBCONTRACTOR shall be responsible for payment of all reasonable attorney's fees, and the other costs of suit, if necessary.

IN WITNESS WHEREOF, the parties have hereunto signed their names to this Subcontract Agreement the day and date first hereinabove written in the State of Tennessee.

WITNESS:

*V. J. Jones*

WITNESS:

*Barbara Powers*

CONTRACTOR:

RCR BUILDING CORPORATION

By: *Andy Cas*

Title: Project Manager

SUBCONTRACTOR:

American Excavators, LLC.

By: *M. M.*

Title: Chief Operator

Contract 9914-01

PLEASE COMPLETE ATTACHMENTS I AND II WHICH ARE ATTACHED HERETO AND BY REFERENCE MADE A PART OF THIS SUBCONTRACT AGREEMENT.

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## ATTACHMENT II

RCR BUILDING CORPORATION requires that all subcontractors provide a complete list of suppliers that will be furnishing material or equipment under this Subcontract Agreement. It is our policy to contact these suppliers for a credit reference at the beginning of the job. We also require monthly lien releases from these same suppliers as progress payments are made. Please provide the information below and return this form to us, along with your executed Subcontract Agreement.

List of material or equipment suppliers anticipated for

Williamson Co. Community Service Bldg. (Name of Project)

Company U.S. Filter Distribution

Address 2353 S. Church St. Murfreesboro, TN 37127

Telephone 615-893-0900

Approximate dollar amount of purchase \$31,000.<sup>00</sup>

Company Cloud Concrete Products

Address 125 International Blvd La Verga, TN 37086

Telephone 615-242-1920

Approximate dollar amount of purchase \$25,000.<sup>00</sup>

Company \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Approximate dollar amount of purchase \_\_\_\_\_

(Use additional space or pages as necessary.)

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