



P.O. BOX 151  
SANIBEL, FL 33957  
Sanibel: 239-283-2992 Ocala: 352-873-2992

**SUBCONTRACT AGREEMENT**

Project Name: \_\_\_\_\_ Job No.: \_\_\_\_\_  
Project Address: \_\_\_\_\_  
Subcontractor Name: \_\_\_\_\_  
Subcontractor Address: \_\_\_\_\_  
Attention: \_\_\_\_\_ Phone: \_\_\_\_\_  
Sub Owner Name: \_\_\_\_\_  
Sub Owner Address: \_\_\_\_\_  
Total Contract Amount: \_\_\_\_\_ Po# \_\_\_\_\_ Codes: \_\_\_\_\_

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Current Insurance Certificates are Required.....(x ) YES ( ) NO  
Payment/Performance Bond Required.....( ) YES (x) NO

This agreement, made as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between J. F. Smith Building Contractors, Inc., (J. F. Smith), a Florida Corporation, and (Subcontractor).

**ARTICLE I – Description of Work**

(a) The Subcontractor agrees to furnish all work, labor, services, materials, plant, equipment, tools, scaffolds, appliances and other facilities required to perform the work to complete.

**SCOPE OF WORK AS PER PROJECT SPECIFIC PURCHASE ORDERS**

(“Work”) for and at various project sites in LEE AND CHARLOTTE COUNTY FLORIDA, (“Premises”), as shown and described in and in strict accordance with the Plans, Specifications, General Conditions, Special Conditions and Addenda provided by J. F. Smith, and with the terms and provisions of the General Contract (“General Contract”) between J.F. Smith Building Contractors, Inc., and various clients (“Owners”), dated in various months and in strict accordance with the additional Provisions page(s) attached and made a part of the subcontract agreement.

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## ARTICLE II – Price

(a) The sum to be paid by J. F. Smith, out of funds received from the Owner, to the Subcontractor for the satisfactory performance and completion of Work and all of the duties, obligations and responsibilities of the Subcontractor under this agreement, shall be as noted on the individual Purchase Order for each of the various projects.

(b) The price includes all Federal, State, County, Municipal, and other taxes imposed by law on any of the work or items necessary the work, including but not limited to sales, use and personal property taxes payable by levied or assessed against the Owner, J. F. Smith or the Subcontractor. If the law required taxes to be stated and charged separately, the total price of all items included in the work, plus the amount of taxes will not exceed the Price. The Price also includes \$100 as separate consideration for the indemnity obligations referenced herein.

(c) On or before the 20<sup>th</sup> day of each month, Subcontractor agrees to submit, in the form required by J. F. Smith, written request for payment showing the proportionate value of the work installed to that date, from which shall be deducted: (1) a reserve of ten percent (10%), if applicable in the General Contract; (2) all previous payments; and (3) all charges for services, materials, equipment and other items furnished by J. F. Smith and chargeable to the Subcontractor. The amount of pay request, as determined and approved by J. F. Smith **and** for which payment has been received by J. F. Smith from the owner as provided in this article, shall be due and paid to the Subcontractor **on or about the tenth** (10<sup>th</sup>) day of the month following the date of the pay request **if** J. F. Smith has received payment therefore. J. F. Smith reserves the right to issue joint checks **if** the situation, in the opinion of J. F. Smith, merits the same. Subcontractor must provide current partial releases of lien to obtain interim draws and a final release of lien for final payment. These releases are required for all vendors and subcontractors.

(d) The obligation of J. F. Smith to make any payment under this Agreement, including progress of final payment, payment for extras, and change orders, is subject to the express condition precedent of J. F. Smith's receipt of payment by the Owner. If the Owner does not pay J. F. Smith therefore, the Subcontractor agrees to look exclusively to its lien rights against the Owner's property for payment and not to look to J. F. Smith for payment. If J. F. Smith has provided payment and/or performance bonds, the obligation of J. F. Smith and its surety to make any payment including a progress payment or final payment, or payment for extras, change orders, is subject to the express condition precedent of receipt of payment by J. F. Smith from the Owner. "If the payment provisions of the Subcontract conflict with the provisions of General Contract between J. F. Smith and the Owner, then the provisions of this Subcontract regarding conditions precedent to payment will govern."

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(e) The Subcontractor agrees, if requested by J. F. Smith, to submit a detailed schedule showing the break down of the Price into its various parts for use only as a basis of checking the Subcontractor's monthly requisitions with its first request for payment. J. F. Smith reserves the right, in its sole judgment, to extend the date of any payment under this Agreement.

(f) The Subcontractor agrees, if requested by J. F. Smith, to furnish information, evidence and substantiation as required by J. F. Smith regarding the respect, nature and extent of all obligations incurred by the Subcontractor for or in connection with the Work, all payments made by Subcontractor and any amounts remaining unpaid.

(g) Interim and final payments to the Subcontractor will be made only if funds are received by J. F. Smith from the Owner, the Construction Lender or the Owner's Agent. Receipt of interim and final payments by J. F. Smith from the Owner is an express condition precedent before J. F. Smith will be obligated to make interim or final payments to the Subcontractor. In addition, interim and final payments by J. F. Smith to the Subcontractor shall not become due and payable until the following additional express conditions precedent have met: (1) the completion and acceptance of the work by J. F. Smith; (2) provision by the Subcontractor evidence satisfactory to J. F. Smith that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished, or incurred for or in connection with the portion of work completed; and (3) execution and delivery by the Subcontractor, in a form satisfactory to J. F. Smith, of a General Release in favor of J. F. Smith, the Surety and the Owner, along with all applicable close out documents, warranties, owner's manuals, etc., which are called for in the contract documents. If any claim, obligation or lien is made after final payments, the Subcontractor agrees to refund to J. F. Smith all monies that J. F. Smith, its Surety and/or the Owner pays in satisfying, discharging or defending against such claim, obligation or lien or any action brought or judgment recovered, and all costs and expenses including legal fees and costs, incurred in connection with any claim. The final payment will be due within thirty (30) days after all of the foregoing express conditions precedent listed in this Article have been met.

(h) If any claim or lien is made or filed against J. F. Smith, the Owner, the Project or the Premises by any person claiming that the Subcontractor or any subcontractor or other person working under this Subcontract has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at anytime there is evidence of nonpayment of any claim or lien for which J. F. Smith, its Surety or the Owner may become liable and which is chargeable to the Subcontractor, or if the Subcontractor or any subcontractor or other person working under this Subcontract causes damage to the Work or to any other Work on the Project, or if the Subcontractor fails to perform or is otherwise in default under any of the terms or provisions of this Agreement, J. F. Smith shall have the right to retain from any payment an amount which it deems sufficient to: (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered; (2)

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Initials

make good any such nonpayment, damage, failure or default; and (3) compensate J. F. Smith, its Surety and the Owner for and indemnify them against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by any of them in connection with any claim. J. F. Smith has the right to apply and charge against the Subcontractor any portion of the amount retained as required for the satisfaction of any claims. If the retainage is sufficient to cover any claim(s), the Subcontractor agrees to be liable for the difference to J. F. Smith.

(i) No payment (final or otherwise) made under or in connection with this agreement constitutes conclusive evidence of: (1) the performance of the Work or of this Agreement, in whole or in part; (2) acceptance of defective, faulty, or improper work or materials; or (3) release of the Subcontractor from any of its obligations under this Agreement. Entrance and use by the Owner does not constitute acceptance of the Work or any portion of the Work.

### **ARTICLE III – Contract Documents**

(a) The Plans, Specifications, General Conditions, Addenda and General Contract and this Agreement (“Contract Documents”), are available for examination by the Subcontractor at all reasonable times at the office of J. F. Smith. The Subcontractor represents and agrees that it has carefully examined and understands this agreement and the other Contract Documents, will investigate the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed and that it enters into this Agreement on the basis of its own examination, investigation and evaluation, and not in reliance on any opinions or representation of J. F. Smith, or the Owner, or their agents.

(b) With respect to the scope of the Work to be performed and furnished by the Subcontractor, the Subcontractor agrees to be bound to J. F. Smith by each and all of the terms and provisions of the General Contract and the other Contract Documents, and to assume toward J. F. Smith all of the duties, obligations and responsibilities that J. F. Smith assumes toward the Owner. The Subcontractor agrees that J. F. Smith has the same rights and remedies against the Subcontractor as the Owner has under the Contract Documents against J. F. Smith, including every duty, obligation, responsibility, right or remedy. The terms and provisions of this Agreement with respect to the Work to be performed and furnished by the Subcontractor are in addition to all of the terms and provisions of the Contract Documents.

(c) This Subcontract Agreement and the provisions of the Contract Documents are intended to Supplement and complement each other. If any provision of this Subcontract Agreement irreconcilably conflicts with the provision of the Contracts, the provision imposing the greater duty or obligation on the Subcontractor will govern. Although drawn by J. F. Smith, this Subcontract Agreement shall be interpreted fairly and reasonably as to each party in the event of any dispute.

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Initials

#### **ARTICLE IV – Time of Completion**

(a) Time is of the essence as to the Work. The subcontractor agrees to commence the Work when notified to begin by J. F. Smith and to diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, in accordance with the project schedule, any revisions to the projects schedule, and any other scheduling requirements listed in this Agreement. The subcontractor agrees not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the project.

(b) The Subcontractor agrees to participate and cooperate in the development of the project schedule providing for the scheduling of the times and sequence of operations required for its Work to meet J. F. Smith's overall schedule requirements and to monitor the project schedule and to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project. The Subcontractor agrees to perform the Work in accordance with the requirements of the project schedule and any revisions to the project schedule.

(c) If the progress of the Work or the Project is delayed by any fault, neglect, act or failure to act by the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers resulting in any additional cost, expense, liability or damage to J. F. Smith or to the Owner or any damages or additional costs or expenses for which J. F. Smith or the Owner may become liable, the Subcontractor agrees to compensate J. F. Smith and the Owner and indemnify them against all costs, expenses, damages and liability incurred as a result.

(d) J. F. Smith may direct the Subcontractor to work overtime and the Subcontractor agrees to work overtime and, provided that the Subcontractor is not in default under any of the terms or provisions of this agreement or of any of the other Contract Documents, J. F. Smith will pay the Subcontractor for actual additional wages paid, plus 10% for general overhead and profit to such increased cost at rates which have been approved by J. F. Smith.

(e) If the progress of the Work or of the Project is delayed by any fault, neglect, act or failure to act by the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers, then the Subcontractor agrees to, at its own cost and expense, in addition to all of the other obligations imposed by this Agreement, work all overtime necessary to make up for time lost in the completion of the Work and of the Project due to its delay. If the Subcontractor fails to make up for the time lost due to its delay, J. F. Smith has the right to cause other subcontractors to work overtime and to take whatever action it deems necessary to avoid delay in the completion of the work and of the Project. The cost and expense of overtime and any other action is the responsibility of the Subcontractor who occasioned the delay.

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Initials

## **ARTICLE V – Extension of Time**

(a) If the Subcontractor is delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the work by any cause, including but not limited to any act, omission, neglect, negligence or default of J. F. Smith or of anyone employed by J. F. Smith, or by any other contractor or subcontractor on the Project, or by the Architect, the Owner or their contractors, subcontractors, agents or consultants, or by damage caused by fire or other causality or by the combined action of workers or by governmental directive or order not chargeable to the Subcontractor, or by any extraordinary conditions arising out of war or governmental regulations, or by any other cause beyond the control of and not due to any fault, neglect, act or omission of the Subcontractor, its officers, agents, employees, subcontractors or suppliers, then the Subcontractor will be entitled to an extension of time for a period equivalent to the time lost by reason of any and all of these causes. The Subcontractor will not be entitled to any such extension of time unless the Subcontractor: (1) notifies J. F. Smith in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty-eight (48) hours of its commencement; and (2) demonstrates to J. F. Smith's satisfaction that it could not have anticipated or avoided and used all available means to minimize the consequences of the delay, obstruction, hindrance or interference.

(b) The Subcontractor agrees that it will not be entitled to any claim for cost reimbursement, compensation or damages for any delay, obstruction, hindrance or interference to the work except to the extent that J. F. Smith is entitled to corresponding cost reimbursement, compensation or damages from the Owner under the Contract Documents for any delay, obstruction, hindrance or interference, and then payment is expressly conditioned on and will be made only in an amount equal to that received by J. F. Smith, on behalf of the Subcontractor, from the Owner on account of the delay, obstruction, hindrance or interference.

## **ARTICLE VI – Freight Charges and Shipments**

(a) The Subcontractor making or ordering shipments will not consign or have consigned materials, equipment or any other items in the name of J. F. Smith. J. F. Smith is under no obligation to make payment for charges on shipments made by or to the Subcontractor but may, at its option, pay such charges, in which case the Subcontractor agrees to reimburse J. F. Smith for the amount of any payments, plus a service charge of twenty-five percent (25%) of the amount paid.

## **ARTICLE VII – Dimensions**

(a) It is the obligation and responsibility of the Subcontractor to take any measurements necessary to insure the proper matching and fitting of the Work covered by this Agreement with contiguous work, notwithstanding the dimension contained in the Plans, Specifications or other Contract Documents.

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Initials

(b) The Subcontractor agrees to prepare and submit to J. F. Smith all shop drawings necessary to completely describe the details and construction of the Work. Approval of shop drawings by J. F. Smith and/or the Architect does not relieve the Subcontractor of its obligation to perform the Work in strict accordance with the Plans, Specifications, the provisions of this Agreement and the other Contract Documents, or of its responsibility for the proper matching and fitting of the Work with contiguous work and the coordination of the Work with other work being performed on the site.

(c) If the proper and accurate performance of the Work depends upon the proper and accurate performance of other work not covered by this Agreement (“other work”) the Subcontractor agrees to carefully examine the other work, determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the Work, use all means necessary to discover any defects in the other work, and before proceeding with the work, report in writing promptly any improper conditions and defects to J. F. Smith, and allow J. F. Smith a reasonable time to have the improper conditions an defects remedied.

### **ARTICLE VIII – Interpretation of Plans and Specifications**

(a) The Work is to be performed and furnished under the direction and to the satisfaction of both the Architect, (if applicable) and J. F. Smith. The decision of the Architect as to the true construction, meaning and intent of the Plans and Specifications is final and binding upon the parties to this Agreement. J. F. Smith will furnish to the Subcontractor additional information and Plans as prepared by the Architect to further describe the work to be performed and furnished by the Subcontractor and the Subcontractor agrees to conform to and abide any additional information. The Subcontractor agrees that it will not make any changes, additions and/or omissions in the Work except upon written order of J. F. Smith as provided in Article IX of this Agreement.

### **ARTICLE IX – Change Orders, Additions and Deletions**

(a) J. F. Smith reserves the express right to make changes, additions and/or omissions at any time in the Work as it may deem necessary, upon written order to the Subcontractor. The value of the work to be changed, added or omitted will be stated in the written change order and will be added to or deducted from the Price.

(b) The value of the work to be changed, added, or omitted will be determined by the lump sump or unit prices, if any, stated in the Purchase Orders issued for the changes of the work. If no prices are stipulated, the value will be determined by the following methods or combination of methods elected by J. F. Smith.

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Initials

(1) By adding or deducting a lump sum or an amount determined by a unit price agreed upon between the parties to this agreement.

(2) By adding (A) the actual net cost to the Subcontractor of labor in accordance with the established rates, including required union benefits, premium the Subcontractor is required to pay for worker's compensation and liability insurance, and payroll taxes on the labor and, (B) the actual cost to the Subcontractor of materials and equipment and such other direct costs as approved by J. F. Smith, less all savings, discounts, rebates and credits, and (C) an allowance of 5% for overhead on items (A) and (B) above, and (D) an allowance of 5% for profit on items (A), (B), and (C) above, unless specified otherwise in the General Contract.

(c) In the case of omitted work, J. F. Smith has the right to withhold from payments due or to become due to the Subcontractor an amount, in J. F. Smith's opinion, equal to the value of the work until the changed, added or omitted value is determined by agreement or by J. F. Smith.

(d) All changes, additions or omissions in the Work ordered in writing by J. F. Smith will be deemed to be a part of the Work and will be performed and furnished in strict accordance with all of the terms and provisions of this Agreement and other Contract Documents.

#### **ARTICLE X – Inspections and Defective Work**

(a) The Subcontractor agrees to at all times provide sufficient, safe and proper facilities for the inspection of the Work by J. F. Smith, the Architect and their authorized representatives in the field, at ships or at any other place where materials or equipment for the Work are in the course of preparation, manufacture, treatment or storage. The Subcontractor agrees to, immediately take down all portions of the Work and remove from the premises all materials whether worked or unworked, which the Architect or J. F. Smith condemn as unsound, defective or improper in any way failing to conform to this Agreement or the Plans, Specifications or other Contract Documents within (24) hours after receiving written notice from J. F. Smith. The Subcontractor, at its own cost and expense, agrees to replace the condemned work or materials with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of the unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement.

#### **ARTICLE XI – Failure to Prosecute**

(a) The following conditions constitute a default under this Agreement on the part of the Subcontractor; (1) The Subcontractor at any time refuses or neglects to supply a sufficient number of skilled workers or materials of the proper quality and quantity; (2) The Subcontractor fails in any respect to prosecute the Work with promptness and diligence; (3) The Subcontractor causes by any

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Initials

act or omission, the stoppage, impediment, obstruction, hindrance or delay of or interference with or damage to the work of J. F. Smith or of any other contractors or subcontractors on the Project; (4) The Subcontractor fails in the performance of any of the terms or provisions of this Agreement or of the other Contract Documents; (5) The Architect determines that the Work or any portion of the Work is not being performed by the Subcontractor in accordance with the Contract Documents; (6) A petition in bankruptcy or for reorganization is filed by or against the Subcontractor; (7) The Subcontractor becomes insolvent or is adjudicated bankrupt or goes into liquidation or dissolution, either voluntarily or under Court Order; or, (8) The Subcontractor makes a general assignment for the benefit of creditors, or otherwise acknowledges insolvency. J. F. Smith has the right, in addition any other rights and remedies provided by this Agreement and the other Contract Documents or by law, after three (3) days written notice to the Subcontractor mailed or delivered to the last known address of the Subcontractor, (a) to perform and furnish itself, or through others, any labor or materials for the Work and to deduct the cost of the performance plus 10% overhead and profit from any monies due or to become due to the Subcontractor under this Agreement, and/or (b) to terminate the employment of the Subcontractor for all or any portion of the Work, enter upon the premises and take possession for the purpose of completing the Work of all materials, equipment, scaffolds, tools, appliances and other items on the Premises, all of which the Subcontractor agrees are transferred and assigned to J. F. Smith for completing the Subcontractor's performance. J. F. Smith has the right to employ any person or persons to complete the Work and provide all the labor, services, material, equipment and other items required for completion of the Work.

(b) If the Subcontractor is terminated pursuant to the terms of this Agreement, the Subcontractor will not be entitled to receive any further payment under this Agreement until the Work is completed to the satisfaction of J. F. Smith and accepted. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the cost and expense incurred by J. F. Smith in completing the Work, any excess will be paid by J. F. Smith to Subcontractor, if the express conditions of all other Articles have occurred or been met. If the cost of completion exceeds any unpaid balance, the Subcontractor agrees to pay the difference to J. F. Smith. Costs and expenses include, not only the cost of completing the Work to the satisfaction of J. F. Smith, and of performing and furnishing all labor, services, materials, equipment, and other items required, but also all losses, damages, costs and expenses, including legal fees and disbursements incurred as a result of the Subcontractor's default.

#### **ARTICLE XII - Loss or Damage to Work: Fire Insurance**

(a) J. F. Smith is not responsible for any loss or damage to the Work to be performed and furnished under this Agreement, from any cause, until after final acceptance of the Work by J. f. Smith. J. F. Smith is not responsible for loss of or damage to materials, tools, equipment, appliances or other personal property owned, rented or used by the Subcontractor or anyone employed by it in the performance of the Work from any cause.

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Initials

(b) J. F. Smith, or the Owner, will effect and maintain fire insurance (with extended coverage, if specified or otherwise required) for all Work, materials and equipment incorporated in the Project and all materials and equipment on or about the Premises intended for permanent use or incorporation in the project or incident to its construction. The fire insurance does not provide coverage for any contractor's machinery, tools, equipment, appliances or other personal property owned, rented or used by the Subcontractor or anyone employed by it in the performance of the Work.

(c) The total value of the property insurable under this Article is as shown on the approved monthly requisitions, plus the total value of property incorporated in the Project or delivered on the Premises during the month but not included in the requisition, as reported by the Subcontractor to J. F. Smith for insurance purposes only. The insurance company will determine the total value of the Subcontractor's work, materials and equipment that is insured under this Article.

(d) This maximum liability to the Subcontractor under this insurance will be for not more than the proportion of any loss which is reflected to the last approved schedule of values for the insured property, and in no event for more than the actual cost.

(e) In the event of a loss insured under this Article, the Subcontractor will be bound by any adjustment which may be made between J. F. Smith, or the Owner, and the insurance company or companies. Payment for the loss, if any, shall be made payable to J. F. Smith and/or the Owner, for the account of any entity it may concern.

### **ARTICLE XIII – Clean up**

(a) The Subcontractor agrees to, at its own cost and expense: (1) keep the Premises free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with the execution of its Work by collecting and depositing all materials and rubbish in locations or containers as designated by J. F. Smith, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its Work and made good all defects which result; (3) at the completion of its Work, in each area, perform all cleaning required to leave the area clean and free of all dirt and debris; and (4) at the entire completion of its Work, remove all of its tools, equipment, scaffolds and surplus materials. In the event the Subcontractor fails to perform any of the requirements of this Article to J. F. Smith's satisfaction, J. F. Smith shall have the right to perform and complete the cleanup itself or through others and charge any cost to the Subcontractor.

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Initials

**ARTICLE XIV – Compliance with Laws; Permits**

(a) The Subcontractor agrees to obtain and pay for all necessary permits and licenses pertaining to the Work unless provided by the General Permit and to comply with all Federal, State, Municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements, including but not limited to those relating to safety, discrimination in employment, fair employment practices or equal employment opportunity, and with the requirements of the American Insurance Association, without additional charge or expense to J. F. Smith. The Subcontractor agrees to be responsible for and correct, at its own cost and expense, any violations of the terms of this Article resulting in connection with the performance of its Work. The Subcontractor agrees to at any time upon demand furnish proof, as J. F. Smith may require, showing compliance and correction of any violations of this Article. The Subcontractor agrees to hold harmless and indemnify J. F. Smith from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses including legal fees and disbursements, caused or occasioned directly or indirectly by the Subcontractor's failure to comply with any laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct any violations of the terms of this Article.

**ARTICLE XV – Labor**

(a) The Subcontractor will not employ men, means, materials or equipment which may cause strikes, work stoppages or any disturbances by workers employed by the Subcontractor, J. F. Smith, or other contractors or subcontractors on or in connection with the Work or the Project or the location of the Project. Subcontractor agrees at all times to have sufficient and thoroughly competent labor to man the job, and a thoroughly competent superintendent or "lead foreman" on the job at all times. The Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality or on separate jobs in which the Work is being performed. The Subcontractor agrees to be bound and abide by all adjustments and settlements of jurisdictional disputes, provided that the provisions of this Article do not violate or conflict with any provisions of law applicable to the settlement of jurisdictional disputes. If the Subcontractor fails to carry out or comply with any of the provisions of this Article, J. F. Smith reserves the right, in addition to any other rights and remedies provided by this agreement, the other contract documents or by law, after (3) days written notice mailed or delivered to the last known address of the Subcontractor, to terminate this Agreement or any part of this Agreement or the employment of the Subcontractor for all or any portion of the Work, and, for the purpose of completing the Work, to enter upon the Premises and take possession, in the same manner, to the same extent and upon the same terms and conditions as set forth in Article XI of this Agreement.

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**ARTICLE XVI – Taxes and Contributions**

(a) The Subcontractor agrees to accept and assume exclusive liability for an indemnify, protect and save harmless J. F. Smith and the Owner from and against the payment of all of the following:

(1) All contributions, taxes or premiums (including interest and penalties) which may be payable under the Unemployment Insurance Law of any State, Federal Social Security Act, Federal, State, County and/or Municipal Tax Withholding Laws, or any other law, measured upon the payroll of or required to be withheld from employees, by any entity employed, engaged in the Work to be performed and furnished under this Agreement.

(2) All sales, use, personal property and other taxes (including interest and penalties) required by any Federal, State, County, Municipal or other law to be paid or collected by the Subcontractor or any of its subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing or use of any materials, equipment, supplies, labor services or other items for or in connection with the Work.

(3) All pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons, by an entity employed, engaged in the Work to be performed and furnished under this Agreement.

**ARTICLE XVII – Patents**

(a) The Subcontractor agrees to indemnify, protect and save harmless J. F. Smith and the Owner from and against any and all liability, loss or damage and to reimburse J. F. Smith and the Owner for any expenses including legal fees and disbursements, which J. F. Smith and the Owner may incur because of claims or litigation on account of infringement or alleged infringement of any letters patent rights by reason of the Work or materials, equipment or other items used by the Subcontractor in its performance.

**ARTICLE XVIII – Construction Liens or Claims**

(a) If any subcontractor, laborer, material, man or supplier of the Subcontractor or any other person directly or indirectly acting for it or any of them files or maintains a lien or claim, whether a mechanics lien, construction lien, or otherwise, against the whole or any portion of or interest in the Project or Premises or any improvements to the Premises or against any monies due or to become due from the Owner to J. F. Smith or from J. F. Smith to the Subcontractor, for any work, labor, services, materials, supplies, equipment or other items performed or furnished for or in connection

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Initials

with the Work or under any change order or supplemental agreement for extra or additional work in connection with the Project, the Subcontractor agrees to cause any and all liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within five (5) days from the date of the filing of any claim or lien. If the Subcontractor fails to do so, J. F. Smith has the right, in addition to all other rights and remedies provided under this Agreement and the other Contract Documents or by law, to cause any and all liens or claims to be satisfied, removed or discharged by whatever means J. F. Smith chooses, at the entire cost and expense of the Subcontractor, including legal fees and disbursements. The Subcontractor agrees to indemnify, protect and save harmless J. F. Smith and the Owner from and against any and all liens and claims and all liens and claims and actions brought or judgments rendered on any liens or claims, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which J. F. Smith and/or the Owner may sustain or incur in connection with any liens or claims.

#### **ARTICLE XIX – Assignment and Subletting**

(a) This Agreement or any monies due or to become due under this Agreement are not assignable in whole or in part without the prior written consent of J. F. Smith. Any assignment or subletting, including any claim for damages or interest in monies payable under any of the terms of this Agreement or the Contract Documents, without prior written consent is void and of no effect and vests no right or right of action in the assignee or subcontractor against J. F. Smith. J. F. Smith's consent to any assignment or subletting does not relieve the Subcontractor of any of its agreements, duties, responsibilities, or obligations under this Agreement and the other Contract Documents, and the Subcontractor remains fully responsible and liable for any defaults, neglects, acts and omissions of its assignees and subcontractors and all persons directly or indirectly employed by them just as it is for its own defaults, neglects, acts and omissions and those of its own officers, agents, servants and employees. The Subcontractor agrees to bind each of its subcontractors to all of the terms, provisions and covenants of this Agreement and the other Contract Documents with respect to the sublet Work. J. F. Smith's consent to any subletting will not be deemed to create any contractual relationship between J. F. Smith and any subcontractor to whom the Work or any portion is sublet, and does not vest any right or right of action in any subcontractor against J. F. Smith.

#### **ARTICLE XX – Termination of Agreement**

(a) J. F. Smith has the right at any time by written notice to the Subcontractor, to terminate this agreement and require the Subcontractor to cease work, in which case, provided the Subcontractor is not in default, J. F. Smith agrees to pay the Subcontractor for any damage directly resulting from the termination, except that the Subcontractor is not entitled to anticipated profits on work not performed or on materials or equipment unfurnished.

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**ARTICLE XXI – Guarantees**

(a) The Subcontractor guarantees the Work to the full extent provided in the Plans, Specifications, General Conditions, Special Conditions and other Contract Documents.

(b) The Subcontractor agrees to remove, replace and/or repair at its own expense and at the convenience of the Owner any faulty, defective or improper work, materials or equipment discovered within one (1) year from the date of the acceptance of the Project as a whole by the Architect and/or the Owner or for a longer period if provided in the Plans, Specifications, General Conditions, Special Conditions or other Contract Documents.

(c) The subcontractor agrees to pay for all damage to the project resulting from defects in the work and all costs and expenses necessary to correct, remove, replace and/or repair the Work, and any other work or property which may be damaged in correcting, removing, replacing or repairing the Work.

**ARTICLE XXII – Accident Prevention**

(a) The Subcontractor agrees that the prevention of accidents to workmen engaged in the vicinity of the Work is its responsibility. The Subcontractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as applicable to the Work, including the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or are in the future adopted or issued under the Federal Occupational Safety and Health Act, and with the safety standards established during the progress of the Work by J. F. Smith. When ordered, the Subcontractor agrees to stop any part of the Work which J. F. Smith deems unsafe until corrective measures satisfactory to J. F. Smith are taken, and the Subcontractor agrees that it will not make any claim for damages growing out of stoppages under this Article. If not done by the Subcontractor, J. F. Smith may take corrective measures at the cost and expense of the Subcontractor and deduct the cost incurred from any payments due or to become due to the Subcontractor. Failure on the part of J. F. Smith to stop unsafe practices in no way relieves the Subcontractor of its responsibility for any resulting damages or claims. In the event the Federal Occupational Safety and Health Act administrator assesses a fine or penalty of any nature, J. F. Smith reserves the right to backcharge the responsible subcontractor therefore.

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**ARTICLE XXIII – Liability for Damage and Personal Injury**

(a) The Subcontractor assumes all responsibility and liability for any damage or injury, including death, to all persons and property, caused by, resulting from, arising out of or occurring in connection with the execution of the Work, preparation for its Work, or any extension, modification, or amendment to the Work. The Subcontractor's liability is only limited to the extent, if any, expressly prohibited by statute and excluding any acts or omissions of the party indemnified for which it is not legally entitled to be indemnified by the Subcontractor under applicable law. If any claims for damage or injury, including death, be made or asserted, whether or not such claims are based upon J. F. Smith's or the Owner's alleged active or passive negligence or participation in the wrong or any alleged breach of any statutory duty or obligation on the part of J. F. Smith or the Owner, the subcontractor agrees to indemnify and hold harmless J. F. Smith and the Owner, their officers, agents, servants and employees from and against any and all claims and from and against any and all loss, cost, expense, liability, damage or injury, including legal fees and disbursements, that may be sustained as a result of any event contemplated in this Article. The Subcontractor agrees to assume, on behalf of J. F. Smith and the Owner, their officers, agents, servants and employees, the defense of any action at law or in equity which may be brought by reason of any claims under this Article, and to pay on behalf of J. F. Smith and the Owner, their officers, agents, servants and employees, the amount of any judgment that may be entered in any action. In the event that any claim, loss, cost expense, liability, damage or injury arise or are made, asserted or threatened against J. F. Smith and/or the Owner, their officers, agents, servants or employees. J. F. Smith has the right to withhold from any payments due or become due to the Subcontractor an amount sufficient in its judgment to protect and indemnify J. F. Smith and the Owner, their officers, agents, servants and employees from and against any and all claims, loss, cost, expense, liability, damage or injury including legal fees and disbursements. J. F. Smith may require the Subcontractor to furnish a surety bond satisfactory to J. F. Smith guaranteeing protection under this Article within five (5) days after written demand has been made by J. F. Smith.

(b) The Subcontractor expressly and specifically waives any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of inability or recovery under worker's compensation laws.

(c) Before commencing with the Work, the Subcontractor agrees to procure and maintain at its own expense, until completion and final acceptance of the Work, the following insurance companies satisfactory to J. F. Smith: provided, however, if the General Contract provides for higher limits, they shall be required of the Subcontractor.

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**1. Worker's Compensation and Employer's Liability Insurance** in accordance with the laws of the State in which the Work is situated, **even though Subcontractor may be qualified for exemption.**

**2. Comprehensive general liability insurance including completed operations, contractual liability insurance against the liability assumed in this agreement, and including contractors protective liability insurance** if the Subcontractor sublets to another all or any portion of the Work, with the limits acceptable to the Contractor's insurance agent.

**3. Comprehensive automobile liability insurance** covering all owned, non-owned and their automobiles or trust used in connection with the Work, with limits acceptable to the Contractor's insurance agent.

(d) Before commencing the Work, the Subcontractor agrees to furnish a certificate satisfactory to J. F. Smith from each insurance company showing that the required insurance is in force, stating policy numbers, dates of expiration, limits of liability and providing that the insurance will not be canceled or changed until the expiration of at least thirty (30) days after written notice of cancellation or change to J. F. Smith. J. F. Smith will be named as an additional insured under these policies of insurance. J. F. Smith will withhold any payment otherwise due for Subcontractor's failure to have in place a satisfactory certificate of insurance.

(e) If the Subcontractor fails to procure and maintain he required insurance, J. F. Smith has the right, but not the obligation, to procure and maintain insurance for and in the name of the Subcontractor and the Subcontractor agrees to pay the cost and furnish all necessary information to effect and maintain the insurance.

#### **ARTICLE XXIV – Bonds**

(a) The Subcontractor agrees, if requested by J. F. Smith, to furnish to J. F. Smith a subcontract bond in the amount of the Subcontract. The form of the bonds and the issuing Surety must be on the approved bond form attached hereto. The cost of the subcontract bond will be added to the Subcontractor's original proposed price for the Work.

#### **ARTICLE XXV – Severability**

(a) In the event that any provision or any part of a provision of this Agreement is determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority have jurisdiction, that determination will not impair or otherwise affect the validity, legality, or unenforceability of the remaining provisions or parts of provisions of this Agreement, which will remain in full force and effect as if the unenforceable provision or part were deleted.

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**ARTICLE XXVI – Arbitration**

All disputes arising under the terms of this Agreement or arising between the parties in connection with the negotiation and performance of this Agreement shall be decided by binding arbitration pursuant to Section 682.01 et seq. Of the Florida Statutes (Florida Arbitration Code) as amended from time to time and not under the rules of the American Arbitration Association

**Arbitrator.** The arbitration shall be before one (1) arbitrator, who shall be a licensed, practicing attorney in the State of Florida with at least ten (10) years experience. If the parties fail to agree on the sole arbitrator within fifteen (15) days of written notice from either party of a dispute to be submitted to arbitration, either party may apply to have the arbitrator appointed by a court of competent jurisdiction pursuant to Section 682.04, Florida Statutes.

**Time of Arbitration.** The arbitration hearing shall be held within forty-five (45) days from the date of the arbitrator’s acceptance of his or her duties, unless otherwise agreed by all parties, or extended by the arbitrator on good cause shown.

**Cost of Arbitration.** The fees and costs of the arbitration shall be equally divided between the parties. If a party fails to pay the fees of the arbitrator as requested from time to time, the other party may advance any such fees, which shall be due with interest at the maximum legal rate permitted by law from the date of advancement, and shall be part of the award in the arbitration.

(a) This Agreement constitutes the entire agreement between the parties. No oral representations or other agreements have been made by J. F. Smith except as stated in the Agreement. This Agreement may not be changed in anyway except as provided by this Agreement, and no term or provision may be waived by J. F. Smith except in writing, signed by its authorized officer or agent.

(b) The parties, for themselves, their heirs, executors, administrators, successors and assigns, agree to the full performance of all the terms and provisions contained in this Agreement.

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In witness whereof, the parties to these presents have set their hands on the day, year stated below.

\_\_\_\_\_  
Joseph F. Smith, Jr., President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Subcontractor, Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Subcontractor's Company Name

\_\_\_\_\_  
Date

Enclosures: The following attachments are part of this Subcontract Agreement

Subcontract Questionnaire	___	(1) Exhibit "A" – Applicable Contract Document	___
Request for License Information	___	(2) Exhibit "B" – Scope of Work	___
Application/Request for Payment Form	___	(3) Design/Build Rider	___
Partial and Final Waiver Forms	___	(4) Bond Form	___
Other: Subcontractor Information Sheet	___	(5) Other: _____	___
Construction Schedule	___	(6) Other: _____	___
RFI Form and Example	___	(7) Other: _____	___

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