



GENERAL CONTRACTORS
CONSTRUCTION MANAGERS

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SUBCONTRACT

Subcontract No.: {Contracts.ContractNumber}

This Subcontract is entered into this day, **{Date.Long Date}**, between Professional Building Systems ("PBS") and the following subcontractor (the "Subcontractor"):

{Company.Name}
{Addresses.DisplayAddress}
Voc.: {Addresses.Tel}
Fax.: {Addresses.Fax}

For the following project:

{Projects.Name}
{Projects.Address}
PBS Job Number: {Projects.Number}

The Project Owner is:

{LegalDocInfo.Owner}
{LegalDocInfo.OwnerAddr1}
{LegalDocInfo.OwnerAddr2}

The PBS Project Manager: **{Projects.ProjectManager}**

Architect:

{LegalDocInfo.ArchName}

In consideration of the mutual promises set forth below and by executing this Subcontract, PBS and the Subcontractor agree to the terms that are set forth in this Subcontract.

Terms of Subcontract

1. Subcontract. This Subcontract governs the relationship between PBS and the Subcontractor for all of the work that the Subcontractor performs for PBS on the Project referred to above.

2. Scope of Work. The Subcontractor agrees to perform all of the **{Contracts.Description}** work described in the attached Exhibit "A" (the "Work") at the Project in conformity with all of the requirements of this Subcontract.

Exhibit "A"

SPECIAL INSTRUCTIONS:

1. **Provide labor, materials, supervision and quality control to complete services in strict accord with the plans and specifications for the contemplated scope of work, herein described.**

2. **Provide six (6) complete sets of project submittals and shop drawings in accord with the contract documents.**

3. **Provide two (2) complete sets of MSDS books for related materials.**

4. **This contract includes material cost increases and decreases that may occur between the proposal date and the contract. Change Order Requests (COR's) for material cost changes will not be honored.**

5. **Erect, maintain and remove promptly on completion OSHA approved scaffolding, ladders and or lifts required to complete this Scope of Work.**

6. **Firestopping related to this Scope of Work is the responsibility of this contractor.**

7. **All related debris is to be removed DAILY to GC provided dumpster.**

8. **Each subcontractor is required to furnish one laborer for one day each week that they have workers on site to participate in a group clean up of all the unclaimed debris, trash, food containers and the like, not attributable to any particular trade.**

SCOPE OF WORK:

{Contracts.ScopeOfWork}

3. Subcontract Amount. PBS shall pay the Subcontractor the total sum of **({Contracts.OrigValue} "NumToText") ({Contracts.OrigValue}) dollars** (the "Subcontract Amount") for the performance of the Work. The Subcontract Amount includes all sales and use taxes that are applicable to the Work. In calculating the Subcontract Amount, the Subcontractor has taken into account any fluctuations in the cost of labor and materials since the date any proposals for the Work were given to PBS.

4. Schedule of Values and Applications for Payment. Unless different payment terms are specifically agreed to in writing, PBS will pay the Subcontractor on a monthly basis for the Work performed in accordance with an approved schedule of values. Before it submits its first monthly payment application, the Subcontractor will provide PBS with a schedule of values which accurately

allocates the cost of the Work to the various portions of the Work (the "Schedule of Values"). **The Subcontractor will submit to PBS a monthly application for payment for work actually performed during the current application period on a form approved by PBS on or before the 20th day of each month.** Each application for payment shall be submitted with sufficient detail and backup documentation to verify the amount claimed to be due and original unconditional partial or final lien waivers from the Subcontractor and its suppliers. Stored materials may be included in an application for payment only if payment for stored materials is approved in advance and in writing by PBS, but the Subcontractor maintains the risk of loss with respect to all stored materials until they are actually incorporated into the Project. PBS will review and, if appropriate, approve in whole or in part the Subcontractor's monthly application for payment and include the approved amount in PBS' application for payment to the general contractor. PBS will pay the approved amount to Subcontractor within ten (10) days of the date PBS receives payment of the amount due to PBS for the Subcontractor's Work, subject to a retainage of ten percent (10%). Notwithstanding anything to the contrary in this Subcontract, a strict and absolute condition precedent to PBS' obligation to pay the Subcontractor shall be PBS' receipt of payment for the Subcontractor's Work from the Owner, it being the intent of the parties that PBS shall have no legal obligation to pay the Subcontractor for any of the Work (including retainage) unless and until PBS has also been paid by the Owner for the Work (or retainage). PBS reserves the right at any time to issue joint checks to the Subcontractor and any of the Subcontractor's suppliers, subcontractors or laborers.

5. Payment of Retainage. Subject to the last two sentences in the preceding paragraph, PBS will pay the Subcontractor its retainage within thirty (30) days after the last of the following has occurred: a) the Subcontractor has completed all of the Work, including punch work; b) PBS and the Owner have accepted the Work; c) the Subcontractor has submitted a final application for payment which includes the retainage amount and unconditional final lien waivers signed by the Subcontractor and its suppliers; d) Subcontractor has prepared and submitted all necessary close-out documents to PBS, including but not limited to manufacturers warranties and as-built drawings, and PBS, the Owner and the Owner's architect have accepted those close-out documents; and e) PBS has been paid the Subcontractor's retainage amount by the Owner.

6. Payments to Suppliers and Liens. The Subcontractor shall promptly pay all of its suppliers, employees, independent contractors, laborers and all other persons who supply labor or material to the Project through the Subcontractor, including all applicable taxes, benefits, insurance premiums and other costs. The Subcontractor shall keep the Project free and clear of all liens from any of the foregoing. If a lien is filed against the Project by any of the foregoing, the Subcontractor shall without demand remove the lien from the Project within fifteen (15) days of the date the lien is filed. If the Subcontractor fails to remove the lien within that time period, PBS may terminate the Subcontractor and/or take whatever steps it deems advisable to remove the lien, including but not limited to paying the lien or transferring it to a bond, and the Subcontractor shall immediately pay all amounts incurred by PBS to remove the lien from the Project, including bonding costs, court costs, attorneys fees and interest on any cash deposits at the highest rate allowed by law.

7. Change Orders. No claim by the Subcontractor for changes to the scope of the Work or for additional money or time will be valid unless it is in writing, is signed by the PBS Project Manager identified on page 1 of this Subcontract, and expressly states that additional money (over and above the price set forth in this Subcontract) will be paid to the Subcontractor or that additional time will be given for performance of the Work (collectively, a "Change Order"). A Change Order signed by any person other than PBS' Project Manager (i.e. a field superintendent) is null and void for any purpose except to signify that the Subcontractor has completed certain work. If the Subcontractor performs any work without a Change Order under the belief that PBS should pay additional money or grant additional time for that work, it knowingly assumes the risk that it may not be paid additional money or

granted additional time for that work. Any claim for additional money must be submitted to PBS in writing no later than fourteen (14) days after the date the work giving rise to the claim for additional money was commenced, and if the claim is not submitted in writing by that deadline the claim will be deemed to have been irrevocably waived. Any claim for additional time must be submitted to PBS in writing no later than seven (7) days after the date the event giving rise to the claim for additional time occurred, and if the claim is not submitted in writing by that deadline, the claim will be deemed to have been irrevocably waived.

8. Construction Change Directives. PBS reserves the right to direct the Subcontractor to perform certain work even though the parties have not been able to agree to the terms of a Change Order. In those cases, PBS will issue a written Construction Change Directive to the Subcontractor which directs the Subcontractor to change the scope of the Work and the Subcontractor hereby agrees that it will promptly comply with the directive. After a Construction Change Directive has been issued, the parties will either mutually agree to an adjustment in the Subcontract Amount, or if no agreement is reached, the Subcontract Amount will be increased or decreased in an amount equal to the reasonable costs or savings to the Subcontractor to comply with the directive, together with the Subcontractor's reasonable overhead and profit attributable to the directive.

9. Direct Purchases of Materials by Owner. The Owner may request PBS, and PBS may request Subcontractor, to allow the Owner to directly purchase materials that may be included as part of the Work in order to obtain savings on sales and use taxes. The Subcontractor agrees that upon receipt of such a request, it will prepare a Change Order deleting the furnishing (but not the installation) of those materials from the scope of the Work, and will reduce the Subcontract Amount by the actual cost to the Subcontractor of those materials including all sales and use taxes. However, the Subcontractor agrees that because the Subcontractor is not reducing its overhead and profit, it will warrant the materials that are directly purchased by the Owner as if they were purchased and furnished by the Subcontractor.

10. Setoff. If the Subcontractor is indebted to PBS for any amount of money, regardless of where or how the debt arose, PBS has the absolute right to satisfy that debt by setting off the debt against any amount that PBS may owe to the Subcontractor under this Subcontract. If PBS exercises this right of setoff, it will notify the Subcontractor within a reasonable amount of time that it has exercised its right of setoff and the amount it has setoff against this Subcontract.

11. Time for Performance of the Work. The Subcontractor will use its best efforts to staff the Project with sufficient labor and materials in order to perform the Work so that the Work will be completed in accordance with the Project Schedule for the Project and the Work, as that schedule may be amended from time to time. Because the Subcontractor's failure to timely perform the Work may subject PBS to overtime charges, costs for supplemental forces, delay damages and/or liquidated damages, time is of the essence in the Subcontractor's performance of the Work. If PBS reasonably believes that the Subcontractor is failing to use its best efforts to perform the Work such that PBS believes that the Work will delay the timely completion of the Project, PBS may upon forty-eight (48) hour oral or written notice: a) require the Subcontractor to work overtime at no additional cost to PBS; b) supplement the Subcontractor's forces or materials with its own forces or materials and deduct the cost of the supplemental forces or materials (including a reasonable charge for overhead and profit) from any amounts that are due to the Subcontractor; c) terminate the Subcontractor from the Project for cause, make alternative arrangements to have the Work completed and deduct the cost of completing the Work (including a reasonable charge for overhead and profit) from any amounts that are due to the Subcontractor; or d) exercise any other legal or equitable remedies it may have against the Subcontractor.

12. Supervision and Employees. The Subcontractor shall staff the Project with competent supervisors and employees (and, if allowed by this Subcontract, competent subcontractors and their

supervisors and employees) who are all skilled in the performance of the Work. If PBS determines in its sole discretion that any persons working for or under the Subcontractor are not sufficiently skilled in the performance of the Work, do not comply with PBS' job site rules or other legal requirements, or are disruptive to the Project, PBS or other subcontractors or suppliers, PBS may order the Subcontractor to remove those persons from the Project and replace them with other personnel.

13. OSHA Requirements. The Subcontractor expressly agrees that it shall be solely responsible for supervising its employees, that it shall comply with all the rules, regulations, orders, standards & interpolations promulgated pursuant to the OSHA of 1970, including but not limited to training, record keeping, providing personal protective equipment, lockout, and tagout procedures, and MSDS and labeling as required by the Right to Know standard 29 CFR 1900.1200.

14. Provision of Equipment. Unless specifically stated otherwise, the Subcontractor will provide and maintain in good condition and repair, at its sole cost and expense, all safety equipment, scaffolding, lifts, tools and other equipment that is necessary to complete the Work in conformity with all of the requirements of this Subcontract.

15. Cleanup. The Subcontractor agrees that it will clean up all debris related to the Work on a daily basis and will keep all areas that it is working in broom clean at all times. If PBS determines that the Subcontractor has failed to comply with this requirement, then PBS may upon twenty-four (24) hour oral or written notice to the Subcontractor have the debris and areas cleaned and the Subcontractor will pay PBS the sum of \$100 per hour for the cost of cleaning. PBS may deduct the cost of the cleaning from any amounts that are or may be due to the Subcontractor.

16. Review of Plans and Specifications and Site. The Subcontractor represents and agrees: a) that it has thoroughly reviewed all of the plans, specifications, drawings, the Project Schedule and the Project Manual for the Project (collectively, the "Plans and Specifications"); b) that it has thoroughly reviewed how the Plans and Specifications may affect how and when the Subcontractor is to perform the Work; c) that it has determined that with respect to the Work the Plans and Specifications are complete, consistent, in compliance with all applicable local, state and federal laws, ordinances, statutes, building codes, regulations and safety standards, and contain sufficient detail for the Subcontractor to understand the scope of its Work; d) that it has thoroughly investigated the site where the Work is to be performed and the conditions under which the Work is to be performed; and e) that it has agreed to perform the Work based upon its own investigation and evaluation of the Plans and Specifications and the site and not in reliance on any representations or opinions made by PBS, the Owner or any of their respective officers, employees or agents. The Subcontractor agrees that the Work includes the furnishing of all labor and materials that are reasonably inferable from the Plans and Specifications for a complete job. The subcontractor also agrees that the Plans and Specifications are complementary, and what is required by one shall be binding as if it was required by all.

17. Inspections Before Work is Commenced. Before the Subcontractor performs any part of the Work on or connected to any work that has been performed by the Owner, PBS or any other subcontractor (at any level) at the Project, the Subcontractor shall inspect that work to determine that it has been properly performed and that it is ready and suitable for the Work to be performed on it or made a part thereof. The Subcontractor's performance of the Work on that work shall constitute an acceptance of that work and, if the Subcontractor's Work must be redone or repaired because of defects in that work that was performed by others, the Subcontractor at its sole cost and expense will redo or repair the Work. If the Subcontractor believes that the work that was performed by others has not been properly performed or that it is not ready for the Work to be performed on it or made a part thereof, it shall immediately notify PBS in writing and await further instructions from PBS.

18. Compliance with Plans, Specifications and Laws. The Subcontractor will perform all of the Work in accordance with the Plans and Specifications and in compliance with all applicable local, state and federal laws, ordinances, statutes, building codes, regulations and safety standards, as well as PBS' job site rules which are attached hereto. Any Work that is not in accordance with the Plans and Specifications or other applicable requirements will be considered defective and shall be promptly repaired or replaced by the Subcontractor at its sole cost and expense. If the Subcontractor fails to comply with PBS's job-site rules and all life safety, OSHA or similar requirements, then PBS may order the Subcontractor to immediately stop all Work until it complies with those requirements or, if the Subcontractor refuses to comply with the requirements or if the violation(s) are repeated or persistent, may terminate the Subcontractor from the Project for cause. Any damages incurred by PBS as a result of the Subcontractor's failure to comply with any of the requirements of this paragraph, including but not limited to any fines, costs and attorneys fees incurred or paid by PBS, shall be immediately paid by the Subcontractor to PBS.

19. Shop Drawings and As-Builts. The Subcontractor shall prepare and submit to PBS any and all shop drawings that PBS requires to be prepared for any part of the Work. Submittal of a shop drawing to PBS shall constitute the Subcontractor's representation that the work shown in the shop drawing complies with all applicable local, state and federal laws, ordinances, statutes, building codes, regulations and safety standards and good construction practices. The Subcontractor shall continually prepare as-built drawings that show the actual location and scope of all of the Work that has been performed by the Subcontractor at the Project, and shall submit copies of those as-built drawings to PBS so often as PBS requests.

20. Warranties. The Subcontractor warrants to PBS that all of the Work performed by the Subcontractor will be: a) new and of good quality; b) free from all defects in labor, materials or fabrication for a period of no less than one (1) year from the date of occupancy of the Project by the Owner or such period of time that PBS is required to warrant the Work to the Owner, the developer or the purchaser of each unit, whichever is longer; and c) performed in compliance with all of the Plans and Specifications, applicable building codes and any performance standards issued by PBS or the Owner. Any part of the Work not complying with these warranties will be promptly repaired or replaced by the Subcontractor (including repairing or replacing other work at the Project that is damaged or otherwise disturbed by the repair or replacement of the defective Work) at its sole cost and expense. If the Project is a condominium, then the Subcontractor also grants to PBS, the developer and the purchaser of each unit all of the statutory warranties described in 718.203(2), Florida Statutes, as amended from time to time.

21. Indemnity. The Subcontractor hereby agrees to indemnify, hold harmless and defend PBS from any and all claims, demands or suits of any nature (a "Claim"), including any costs, expenses and attorneys fees incurred by PBS in connection with a Claim, provided that the Claim arises out of or relates to the Work that the Subcontractor performed or was required to perform or arises out of or relates to the Subcontractor's failure to comply with the requirements of this Subcontract, and further provided that the Subcontractor's indemnity and hold harmless obligations will only apply to the extent that the Claim was caused by an act or omission of the Subcontractor. If the Subcontractor's indemnity obligation arises out of the Subcontractor's failure to pay any of its suppliers, employees, independent contractors, laborers or other persons who have supplied labor or material to the Project through the Subcontractor, then the indemnity specifically includes all damages, costs, expenses and attorneys fees PBS is required to pay to any third parties, including but not limited to the owner, as a result of the Subcontractor's failure to pay.

22. Insurance. At all times while performing any Work under a Purchase Order, the Subcontractor shall purchase and maintain in full force and effect the following insurance: a) Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence and

\$2,000,000 in the aggregate; b) Workers' Compensation insurance with limits no less than those required by law; and c) Automobile Liability insurance with limits of not less than \$500,000 per occurrence. The Subcontractor shall submit certificates evidencing these insurances to PBS prior to the commencement of the Work, and shall submit additional certificates upon demand by PBS. The Commercial General Liability insurance shall name PBS as an additional insured and shall provide that the insurance can be cancelled no earlier than fifteen (15) days after the insurance company sends PBS a notice of cancellation. PBS and the Subcontractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by any insurance policies applicable to the Work except such rights as they have to proceeds of such insurance. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged

23. Termination for Cause and for Convenience. PBS may terminate the Subcontractor for cause from the Project if, in addition to those situations that are specifically described in other paragraphs of this Subcontract, the Subcontractor materially breaches any provision of this Subcontract and fails to cure any of the breach after having received forty-eight (48) hour oral or written notice from PBS of the breach. If the termination is for cause, PBS will be entitled to recover from the Subcontractor all of the damages PBS incurs as a result of the Subcontractor's material breach, including but not limited to the cost to complete the Work (including reasonable overhead and profit) and any consequential, special or liquidated damages PBS incurs as a result of the breach, and may deduct its damages from any amounts that would otherwise be payable to the Subcontractor under this Subcontract. PBS may also terminate the Subcontractor from the Project for convenience (i.e. without cause) if PBS determines that it is convenient for PBS to do so. Any termination that is found not to be "for cause" shall be deemed to be a termination for convenience. If the termination is for convenience, the Subcontractor shall be entitled to be paid solely for the Work that it has performed through the date of termination, including a reasonable overhead and profit on that Work, plus the actual costs incurred to demobilize from the Project.

24. Prohibition on Assignments or Subcontracting. PBS is hiring the Subcontractor to perform the Work based upon many factors, including but not limited to the Subcontractor's reputation, experience, quality of work and financial strength. As a result, the Subcontractor is prohibited from assigning or subcontracting any of its obligations under this Subcontract to any person or entity without the written consent of PBS. Any assignment or subcontracting of the Subcontractor's obligations under this Subcontract shall constitute a material breach of this Subcontract.

25. Licenses. The Subcontractor warrants and represents to PBS that at all times after this Subcontract is entered into, it is and will continue to be properly licensed to perform the Work.

26. Attorneys Fees. The prevailing party in any dispute which may arise between PBS and the Subcontractor concerning any matter that arises out of or relates to this Subcontract or the Project will be entitled to recover its reasonable attorneys fees, court costs and all other expenses from the non-prevailing party regardless of whether litigation or arbitration is filed or the dispute is resolved prior to an action being filed, including all attorneys fees, court costs and other expenses incurred in connection with any appeal.

27. Waiver of Jury Trial. PBS AND THE SUBCONTRACTOR KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT WHICH THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION THAT ARISES OUT OF THIS AGREEMENT OR THE WORK.

28. Forum and Venue for Disputes. Except as set forth herein, the sole and exclusive venue for any dispute between PBS and the Subcontractor shall be the county or circuit courts of Collier County, Florida, unless the dispute involves the foreclosure of a construction lien in which case suit may also be brought in the county or circuit courts in the county in which the Project is located. If PBS is required to arbitrate a dispute with the Owner that involves the Subcontractor or any of the Work, then the Subcontractor agrees that PBS may, at its sole option, join the Subcontractor in that arbitration, and the claims by PBS against the Subcontractor and any defenses to those claims shall be resolved by arbitration and shall be governed by the same rules that govern the arbitration between the Owner and PBS. The Subcontractor acknowledges that arbitration is binding and may eliminate the Subcontractors right to file a lawsuit against PBS.

29. Jobsite Rules and Policies. PBS maintains certain Jobsite and Start Up Rules and Policies which all Subcontractors and their personnel on site are required to adhere to. These Rules and Policies are attached herewith as Exhibit "B":

Exhibit "B"

Job Start – Up Requirements.

Please note: Your subcontract will not be acknowledged or processed until the following requirements have been fulfilled:

1. The subcontractor is required to provide a Certificate of Insurance with the return of these signed documents.
2. The subcontractor is required to provide proof of Workmen's Compensation insurance in accord with item #21 of the subcontract with the return of these signed documents.
3. The subcontractor is required to provide copies of all relevant licenses with the return of these signed documents.
4. The subcontractor is required to provide a Hazcom Book containing relevant Material Safety Data Sheets (MSDS) for all materials to be used in conjunction with the work prior to the start of work.
5. The subcontractor is required to provide a copy of their Safety Meeting format for the project prior to the start of work. *****Weekly Safety Meetings Are MANDATORY*****
6. The subcontractor is required to provide a list of subcontractors that will be used on this project with the return of these signed documents.
7. The subcontractor is required to provide a complete Schedule of Values (AIA format, see page 2 of Exhibit "C") with the return of these signed documents. Be sure to include all major phases and aspects of the work.
8. The subcontractor is required to provide a list of all long lead-time items with their respective lead times. Late product delivery of long lead-time items not ordered in a timely manner or identified at this time is not an acceptable reason to extend a completion date. This information must be included with the return of these signed documents.
9. Proper and complete submittal and shop drawing packages are to be provided at the earliest opportunity. Improper submittals do not constitute an acceptable reason to extend a completion date.

Job Site Policies:

1. Tobacco use. Smoking is not permitted in any building once the roof and windows are in place. Smoking is never allowed in any interior renovation project. Although smokeless tobacco is not prohibited, spitting or clearing tobacco onto building slabs or inside an enclosed building is not allowed. PBS reserves the right to prohibit smoking or the use of tobacco products for any reason at any time.

2. Radios. Radios are not permitted.
3. Profane language. Profane language is absolutely prohibited. Anyone found to be using profane language will be asked to leave the project.
4. Clean Up. The job site must always be kept clean and safe. Daily clean up is mandatory. All subcontractors are required to clean up their own debris daily and place it in the provided container in accord with item 14 of the subcontract. Cleaning your area at the end of the day is mandatory. All loose materials are to be gathered and restocked daily.
5. Toilets. Use only designated toilets. Use of the Owner's toilets is prohibited.
6. Dress. Proper construction attire is required at all times. Sleeved shirts, long pants, construction shoes and hardhat are to be worn at all times.
7. Adjacent Properties. Use of adjacent properties for parking, staging or any other work is prohibited. Loitering after working hours is prohibited. Costs associated with the restoration of damaged adjacent properties are the responsibility of the appropriate parties.
8. Site Management: The Subcontractor will store equipment and materials used on this project only as directed and approved by the Contractor's Job Superintendent.

30. Entire Agreement. This Subcontract shall constitute the entire agreement between PBS and the Subcontractor with respect to the Work, and all prior representations, conversations or preliminary negotiations shall be deemed to be merged into this agreement. No changes to this agreement are valid unless the changes are in writing and signed by PBS.

Professional Building Systems

{Company.Name}

By _____
Date

By _____
Date

Bart Zino
Vice President

{Contracts.ToSignedBy}
{Contracts.ToSignedByTitle}

END OF AGREEMENT