



# LESTER BUILDINGS, LLC

## Subcontract

1111 2<sup>nd</sup> Avenue South  
Lester Prairie, MN 55354-9989  
Phone (320) 395-2531  
Fax: (320) 395-5376  
DUNS:

Job #: \_\_\_\_\_  
Subcontract #: \_\_\_\_\_  
Cost Codes: SUBCARP \_\_\_\_\_

DISTRIBUTION:		
SUB CONTRACT	FIELD	PROJECT FILE
ACCOUNTING /CONTRACT	PENDING/UNSIGNED	

This Subcontract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By and between Lester Buildings, LLC ("Contractor") and the following named "Subcontractor":

Subcontractor \_\_\_\_\_ Federal I.D. No. \_\_\_\_\_  
Address \_\_\_\_\_ -E-mail \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Telephone \_\_\_\_\_ Cell No \_\_\_\_\_

WHEREAS, Contractor has entered into a contract (the "Prime Contract") with \_\_\_\_\_ ("Customer")

For all equipment, and labor, for the building construction of \_\_\_\_\_

Located at \_\_\_\_\_ (The "Project"); and

### CONTRACTOR AND SUBCONTRACTOR AGREE AS FOLLOWS:

**ARTICLE 1 - SUBCONTRACT SUM.** Contractor shall pay to Subcontractor for the full, faithful, and prompt performance of this Subcontract, subject to all terms, conditions, and provisions hereof, the Subcontract Sum of \_\_\_\_\_ Dollars \_\_\_\_\_ payable in the following manner (initial one

- \_\_\_\_\_ -- A single payment made upon Final Completion and signed Project Checklist has been rec'd; or
- \_\_\_\_\_ -- Progress Payments made periodically each \_\_\_\_\_ as more specifically described elsewhere in this Subcontract.

Contractor will withhold 5% retainage from each payment, until Final Completion and Final Payment is received from our customer.

**ARTICLE 2 - BEGINNING AND COMPLETION OF WORK:** Time is of the essence of this Subcontract and Subcontractor agrees to begin the Work as soon as the Project is ready for such Work or, in any event, within \_\_\_\_\_ calendar days after being notified by Contractor to proceed. Subcontractor shall diligently and continuously prosecute and complete the Work in cooperation and coordination with the other work being performed on the Project. The Subcontract Work, subject to adjustment authorized by Contractor, shall be completed in accordance with the following schedule: **Construction to start Approx.** \_\_\_\_\_.

**ARTICLE 3 - SUBCONTRACT DOCUMENTS.** The Subcontract Documents consist of this Subcontract and the following Exhibits together with the additional documents listed and referred to in those Exhibits:

- Exhibit A- SCOPE OF WORK and SIGNED AGREEMENT
- Exhibit B- DRAWINGS AND CHECKLIST

### PERFORMANCE

4.1 Subcontractor agrees to furnish all labor, material, equipment, tools, hoisting, temporary power, safety equipment, taxes, insurance, and all other items necessary to complete the Work described in the Subcontract Documents (See Article 2). The totality of the performance required hereunder by Subcontractor is referred to herein as the "Work".

4.2 Subcontractor realizes that the plans and specifications and other Subcontract documents may not be completed until after Subcon-

tractor's Work has commenced. Nevertheless, the Subcontractor shall begin Work on the basis of the plans and specifications available at the time of commencement of Subcontractor's Work and shall cooperate with the Customer and Contractor to complete the final plans and specifications.

4.3 Subcontractor shall only be entitled to a time extension for any delay, hindrance, interference, or suspension of Work (hereafter collectively referred to as "Delay") if and to the same extent that Contractor is

entitled under the Prime Contract to a time extension for such Delay experienced by Subcontractor. Subcontractor's right to a time extension for such Delay shall be expressly contingent upon and subject to the following conditions precedent:

- .1) Subcontractor shall have furnished Contractor a written notice of Subcontractor's intent to claim a time extension within 48 hours of the commencement of the Delays; and,
- .2) Subcontractor shall have furnished Contractor a written claim for such time extension that otherwise complies with the requisites for making such a claim under the Prime Contract; and,
- .3) Contractor actually obtains a time extension for such Delay under the Prime Contract.

If Subcontractor Work experiences Delays caused by any acts or omissions of Contractor or its subcontractors or suppliers, Subcontractor's sole and exclusive remedy is to request a time extension under this Subcontract. Subcontractor's right to a time extension for such Delays shall be expressly contingent upon and subject to the condition precedent that Subcontractor shall have filed with Contractor a written notice of Subcontractor's intent to claim a time extension within 48 hours of the commencement of the delaying event, condition, or any other cause.

No other time extensions shall be granted to Subcontractor under this Contract.

4.4 Subcontractor agrees that Contractor shall have no liability for damages or additional compensation to Subcontractor for any Delay and Subcontractor covenants to make no claim for such additional compensation or damages. Provided, however, Subcontractor shall be entitled to recover its direct, field costs and expenses at the Project caused by any arbitrary and willful Delays caused by Contractor. Provided, further, if Contractor actually recovers damages or additional compensation from Customer for any Delays, Subcontractor shall be entitled to an equitable share of such recovery. Such equitable share of any actual recovery by Contractor shall constitute Subcontractor's sole and exclusive remedy for Delays caused by Customer or its agents.

**ARTICLE 5 - PAYMENT**

5.1 Subcontractor shall submit its Applications for Payment periodically based up upon the percentage of completion of the Subcontract Work during the preceding period. Contractor shall not be obligated to make any payment unless and until Contractor has received payment from Customer and Subcontractor has furnished Contractor with: (a) an executed copy of this Subcontract; (b) the required Certificates of Insurance; (c) a signed, notarized and properly completed copy of Contractor's Standard Receipt and Release form; and, (d) signed and notarized unconditional lien waiver and release forms from Subcontractor's subcontractors, suppliers, laborers and materialmen for all work performed and materials supplied.

5.2 In addition to the conditions set forth in the preceding paragraph, when Subcontractor makes Application for Final Payment, Contractor will not be obligated to make such Final Payment unless and until Subcontractor has completed all punchlist items and Subcontractor has furnished Contractor with reproducible as-built drawings, if elsewhere required in this Subcontract and applicable warranties/guarantees.

5.2 The acceptance by the Subcontractor of its final payment shall be and operate as a release to the Contractor of all claims and all liability to the Subcontractor for all things done or furnished or relating to the Work and for every act of alleged neglect of the Contractor arising out of the Subcontract Work.

5.3 No payment under this Subcontract, whether partial or final, shall be construed to constitute an acceptance by Customer or Contractor of any Work not in accordance with the Subcontract Documents.

**ARTICLE 6 - INSURANCE**

6.1 Subcontractor agrees, prior to providing any Work or services at the project site, to secure and maintain throughout the duration of the contract, the following types of insurance in the policy amounts specified with insurers rated no less than "A" by Bests Rating Service. Subcontractor shall cause Contractor and Customer to be named as an "Additional Insured" on all such insurance policies with respect to the Subcontract Work. Subcontractor shall furnish certificates of insurance evidencing the coverages required, including the status of Contractor and Customer as Additional Insureds, PRIOR TO SUBCONTRACTOR PROVIDING ANY WORK OR SERVICES AT THE SITE.

<u>Insurance Coverage Required</u>	<u>Minimum Limits of Liability</u>
• Workmen's Compensation	Statutory
• Employers Liability	\$1,000,000

- Commercial General Liability:
  - Bodily Injury and Property Damage (per occurrence) \$1,000,000
  - Property Damage (aggregate) \$1,000,000
- Comprehensive Automobile
  - Bodily Injury
    - Each Person \$1,000,000
    - Each Occurrence \$1,000,000
  - Property Damage
    - Each Occurrence \$1,000,000

6.2 Customer and Contractor shall each be listed as **Additional Insureds** on the Commercial General Liability and Employers Liability policies of insurance provided by the Subcontractor hereunder.

6.3 Waivers of Subrogation. The Contractor and Subcontractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, and (2) the Customer, the Architect, the Customer's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work.

**ARTICLE 7 - SUBCONTRACTOR'S OBLIGATIONS**

7.1 Subcontractor acknowledges and agrees that the expeditious and expedient construction of this Project requires that many subcontractors perform work on the Project simultaneously and that interference with Subcontractor's Work from other subcontractors should be anticipated. The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the work of the Subcontractor, other subcontractors or Customer's own forces.

7.2 Should the proper performance of the Work depend upon the proper performance of other work not covered by this Subcontract, Subcontractor shall carefully examine such other work, determine if it is fit, ready and in suitable condition for the proper performance of the Work, use all means necessary to discover any defects in such other work, and before proceeding with the Work, report promptly any such improper conditions and defects to Contractor, in writing, and allow Contractor a reasonable time to have such improper conditions and defects remedied. Subcontractor shall make no claim for additional compensation therefore.

7.3 The Work is to be performed and furnished under the direction of and to the satisfaction of Contractor and Customer. The decision of Customer or the Customer's representative as to the meaning and intent of the plans and specifications shall be final and binding upon Subcontractor, to the extent such decision is final and binding on Contractor.

7.4 The Subcontractor shall pay for materials, equipment and labor used in connection with the performance of this Subcontract and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

7.5 The Subcontractor shall take necessary precautions to protect the work of other subcontractors from damage caused by operations under this Subcontract.

7.6 The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall coordinate, secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work.

7.7 The Subcontractor shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts insofar as applicable to the performance of this Subcontract.

7.8 Subcontractor agrees that the prevention of accidents to workmen engaged upon or in the vicinity of the Work is its sole and exclusive responsibility. Subcontractor shall give all notices and provide all safety equipment and procedures necessary to comply with all applicable state and federal laws, including without limitation, the federal Occupational Safety and Health Act as amended, ordinances, rules, regulations, and orders of any public authority for the safety of persons or property, and the safety standards established during the progress of the Work by Contractor. Subcontractor shall also post all necessary danger signs and other warnings against hazardous conditions existing, or which may exist on the work site. In addition, Subcontractor shall exercise the utmost care in

handling and storing any explosives or other hazardous materials necessary for the execution of the Work.

7.9 Subcontractor acknowledges receipt of the Lester Buildings, LLC Safety Program and agrees to strictly comply with all requirements of that Safety Program.

7.10 Subcontractor shall report in writing any injury to person or damage to property occurring as a result of the Work to Contractor within twelve (12) hours of the occurrence.

7.11 The subcontractor shall keep the premises free at all times from the accumulation of dirt and debris during the execution of its Work and at the completion thereof shall clean up after its Work in a manner satisfactory to the Contractor and the Customer.

7.12 Subcontractor will pay, when due, all claims for labor, fringe benefits, materials, equipment, and/or Subcontracts applied on, used in, or furnished hereunder, and, upon request, shall furnish satisfactory evidence to Contractor of same. Subcontractor will prevent the filing of any lien of laborers, mechanics, or materialmen, or attachments, garnishments, or suits involving the title of the property of the Project. If any claims or liens have been made against the Project arising out of labor or materials furnished by Subcontractor to the Project or otherwise on account of any actions or failures to act by Subcontractor, Contractor may, at its discretion, withhold amounts otherwise due or to become due hereunder to cover said claims or liens and any costs or expenses which may arise out of same, pending legal resolution or settlement thereof, including without limitation Contractor's reasonable attorney's fees and expenses. This right of Contractor shall be in addition to any other right or remedy of Contractor provided herein or by law. Subcontractor agrees to cause the effect of any such claim or lien to be removed from the title to the Project within ten (10) days after Contractor delivers written demand to do so at the address herein contained, and in the event Subcontractor fails to do so, Contractor, is authorized to purchase a bond twice the amount of the claim, lien or attachment or use whatever means is necessary to cause said claim, lien, or attachment, together with its effect upon the title, to be removed, discharged, satisfied, compromised, or dismissed. The costs thereof, including but not limited to the cost of the bond, Contractor's reasonable attorney's fees and expenses, shall become immediately due to Contractor from Subcontractor. Contractor shall have the right to withhold and deduct all such costs from amounts otherwise due Subcontractor herein.

#### **ARTICLE 8 - WARRANTY**

8.1 Subcontractor warrants that all materials and equipment furnished hereunder are new unless otherwise specified, and that all Work and materials performed and provided hereunder are of the best quality, suited for the purpose intended, free from faults and defect, and in conformance with the Subcontract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the Subcontract Documents. Any breach of this warranty by Subcontractor shall entitle Contractor to all remedies provided by law or by the Subcontract Documents, including the recovery from Subcontractor by Contractor of all damages suffered by Contractor, including but not limited to, consequential, special, indirect, incidental, or other like damages.

8.2 If, within one year after the date of final acceptance of the project by the Customer, any of Subcontractor's Work is found not to be in accordance with the requirements of the Subcontract Documents, the Subcontractor shall correct it promptly after receipt of written notice from the Contractor. Should Subcontractor fail to correct such defective Work promptly and properly, Contractor may make corrections at Subcontractor's expense. The obligations and remedies provided in this subparagraph shall be in addition to and not in limitation of any obligations or remedies provided by law or by the Subcontract Documents. The one-year period shall in no way be construed as a period of limitation.

#### **ARTICLE 9 - INDEMNIFICATION**

9.1 To the fullest extent permitted by law, Subcontractor will defend indemnify, and hold Customer, Customer's Representative, Contractor and all of their agents and employees harmless from all claims, demands, damages, losses, expenses, and liability, statutory or otherwise, of whatsoever kind or nature, including but not limited to reasonable attorney's fees and expenses, for any bodily injury, sickness, disease, or death, or damage to or destruction of property including the loss of use thereof (hereinafter collectively "loss") arising out of or resulting from the performance of the Work by Subcontractor or any of its materialmen or subcontractors, even if the loss was partially caused by the negligence of Customer, Customer's Representative, or Contractor unless the loss was occasioned by the sole negligence of Customer, Customer's Representa-

tive, or Contractor. In any and all claims against Customer, Customer's Representative, Contractor and/or Lester Building Systems or any of their agents or employees by any employees of Subcontractor, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, the indemnification obligation set out above shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers' or workmen's compensation acts, disability benefits, or other employee benefit acts. Subcontractor expressly waives any limitation or "exclusive remedy" provision of worker's compensation or other statutory or common law that might otherwise affect the foregoing indemnification obligation.

#### **ARTICLE 10 - LABOR HARMONY AND EQUAL OPPORTUNITY**

10.1 Subcontractor shall not employ workers, means, materials, or equipment on or in connection with the Work which may cause strikes, work stoppages, or any disturbances by workmen employed by Subcontractor, Contractor, or any other contractors or subcontractors on the Project. Should subcontractor fail to carry out or comply with the foregoing provision, Contractor shall have the right, in addition to any other rights and remedies provided by the Subcontract Documents or by law, after three (3) days' written notice mailed or delivered to the last known address of Subcontractor, to terminate this Subcontract.

10.2 Subcontractor agrees to abide by all EEO regulations and requirements and other applicable legislation including all regulations and requirements set forth on the Standard Nondiscrimination Compliance Agreement.

#### **ARTICLE 11 - PATENTS AND ROYALTIES**

11.1 Subcontractor will pay all royalties and license fees; defend all suits or claims for infringement of any patent rights involved in the Work and save Contractor, Lester Building Systems and Customer harmless from any loss, cost, or expense including reasonable attorney's fees incurred as a result of such use or infringement by Subcontractor.

#### **ARTICLE 12 - CHANGES IN THE WORK**

12.1 The Contractor may at any time, without notice to the Subcontractors surety and without invalidating this subcontract, make any changes to the Work, whether such changes increase or diminish the amount of the Work and or the Subcontract Sum. The Subcontractor shall not make any changes whatsoever except upon written order from Contractor. If the Subcontractor performs any purported additional Work that is not expressly authorized by written order from Contractor ("Unauthorized Work"), including but not limited to Work directed by Customer, such Unauthorized Work will be performed at the sole risk and expense of Subcontractor. Subcontractor expressly and unequivocally waives any right to claim or recover from Contractor any additional costs, compensation or damages attributable to Unauthorized Work. If the Subcontractor requests no additional time within five (5) days following written order for such change, it shall be deemed that no additional time is required by the change.

12.2 If the change in Work provides for an adjustment to the contract Sum, the adjustment shall be based as follows:

- a) The unit prices and rates stated in the Subcontract Documents; or
- b) A lump-sum agreed upon between the parties; or
- c) 110% of the actual, direct cost of the change to the Subcontractor, such costs being the costs for change order purposes as defined in the then current edition of General Conditions of the Contract for Construction, American Institute of Architects document A201.

12.3 If the Contractor and the Subcontractor should not be able to agree as to the amount, either of money or time, to be allowed or deducted for any changes in the Work for the job, it shall, nevertheless, be the duty of the Subcontractor, upon written notice from the Contractor, to proceed immediately with the change and the amount of any such adjustment shall be thereafter resolved by negotiation or by the Disputes procedures which otherwise govern this Subcontract.

#### **ARTICLE 13-TERMINATION**

13.1 If Subcontractor shall fail to correct, replace, and/or re-execute faulty or defective Work, when and as required by Contractor, or in the event Subcontractor fails to adequately staff the Work with properly skilled supervision or workmen or fails to furnish materials or equipment of the proper quantity or quality, or fails in any respect to prosecute the Work, Contractor shall, at its option give written notice to Subcontractor, at Subcontractor's last known address or to Subcontractor's representative at the Project site, of such default with direction to cure the same within two (2) days of Subcontractor's receipt of said notice. If Subcontractor fails to

cure the default within the two (2) days, Contractor shall have the right to terminate this Subcontractors for default. Thereafter Contractor shall have the right to take over and complete all or any part of the Work through other means of Contractor's choice, Subcontractor shall indemnify and hold Contractor harmless from any and all loss or damage or increased costs suffered by Contractor in performance of the Work (including without limitation legal fees and expenses paid or incurred by Contractor to enforce the provisions of this paragraph) occasioned by the failure of Subcontractor to carry out the provisions of this Subcontract.

13.2 If Subcontractor shall file or have filed against it a petition in bankruptcy for reorganization or rearrangement or shall seek either relief against creditors, or shall make a general assignment for creditors, or if a receiver is appointed, or should any of the property of Subcontractor become subject to levy or execution, or should Subcontractor become insolvent, such actions shall constitute a default by Subcontractor and Contractor may, without prejudice to any other right or remedy it may have and without notice, exercise all of the rights and remedies set forth in the preceding paragraph.

13.3 In the event that the Customer terminates or cancels the Prime Contract for any cause whatsoever, this Subcontract shall likewise be deemed canceled and terminated and it is understood that the Contractor shall be under no liability to the Subcontractor except for labor and materials furnished by Subcontractor for the Work up to the date of the termination of the Prime Contract, but only to the extent Subcontractor is liable therefor and only to the extent Contractor receives payment therefor from the Customer. In no event will Subcontractor be entitled to "lost profits" or any other consequential damages as a result of the termination of the Subcontract.

13.3 If at any time and in the sole judgment of the Contractor, Contractor determines that it may be contrary to its interests to proceed with or continue the performance of the Work provided hereunder or any part thereof, whether or not for reasons for which either of the parties hereto is responsible, the Contractor may terminate this Contract by notifying Subcontractor in writing of the termination. It is understood that the Contractor thereafter shall be under no liability to the Subcontractor except for labor and materials furnished by Subcontractor for the Work up to the date of the termination of this Subcontract, but only to the extent Subcontractor is liable therefor and only to the extent Contractor receives payment therefor from the Customer. In no event will Subcontractor be entitled to lost profits or any other consequential damages as a result of the termination of the Subcontract.

**ARTICLE 14 - ARBITRATION**

14.1 Any controversy or claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrator or arbitrators shall be

final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In any arbitration proceeding the arbitrators shall be instructed to abide and be bound by any decision or determination rendered in accordance with the Disputes Clause of the Prime Contract, it being the intent of this provision that decisions and determinations obtained pursuant to the Disputes Clause of the Prime Contract shall be fully "passed through" to Subcontractor and that Contractor not be subject to inconsistent results between results obtained by Contractor under dispute resolution proceedings provided by the Prime Contract and the results of an arbitration proceeding provided by this Article. Arbitration proceedings as provided herein shall occur in Minneapolis, Minnesota and the arbitrators shall be instructed to construe the Subcontract in accordance with the laws of the State of Minnesota.

**ARTICLE 15 - MISCELLANEOUS PROVISIONS**

15.1 No waiver of any of the terms of this Subcontract shall be valid unless it is in writing and executed by all parties. No waiver of any breach of this Subcontract shall be held to be a waiver of any other or subsequent breach.

15.2 Any provision of this Subcontract which is prohibited or unenforceable as matter of law shall be ineffective to the extent of such prohibition or non-enforceability without invalidating the remaining provisions of this Subcontract. The parties acknowledge that counsel is available to all parties hereto and that the common law rule that an agreement shall be strictly construed against the drafter shall not apply to the construction of this agreement.

15.3 In the event that legal proceedings are employed by Contractor to enforce Subcontractor's obligations or defend Contractor's rights under this Subcontract, and in the further event that Contractor is the prevailing party in such legal proceedings, Subcontractor agrees to reimburse and shall be liable to Contractor for the costs and expenses including but not limited to reasonable attorney's fees incurred by Contractor in any such legal proceedings.

15.8 Subcontractor may not assign this Subcontract or any portion of it, or assign any payments due or to become due hereunder, without prior consent of Contractor and then only subject to all provisions of this Subcontract. Contractor may assign this Subcontract without the consent of Subcontractor. This Subcontract shall inure to the benefit and be binding upon the heirs, executors, administrators, successors, and permitted assigns of the respective parties hereto.

15.9 This Subcontract represents the entire and integrated Agreement between the parties hereto and supersedes any negotiations, representations or agreements, either written or oral. No term or provision of this subcontract may be modified or waived except by a writing signed by duly authorized representatives of Contractor and Subcontractor. The titles or headings of any provision of this subcontract are for convenience only.

WHEREFORE, Contractor and Subcontractor have executed this Subcontract to be effective on the date first written above.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES**

Lester Buildings, LLC (**Contractor**)

(**Subcontractor**)

By: \_\_\_\_\_  
Name:  
Title: Project Manager

By: \_\_\_\_\_  
Name:  
Title: Owner

**PROJECT CONTACTS:**

(name)

(telephone number)

**PROJECT MANAGER:  
CONSTRUCTION SUPERVISOR:**

**OFFICE NUMBER:  
MOBILE NUMBER:**

**PROJECT #**