



September 27, 2017

Company
Address
City, State, Zip

RE: xxx
 xxx
 Project No.: xxxx-xxx

Dear Subcontractor:

Enclosed are the following Subcontract Agreement forms and other related documents that require your immediate attention: ***Please note that you may return executed documents by email.***

Please return executed subcontract within 10 days of receipt.

1. One (1) copy of your Subcontract Agreement with Attachment "A". Please sign and return to our office (*email acceptable*). Upon our signing of the Subcontract we will return a fully executed copy to your office for your files. One (1) copy of our Certification of Non-Segregated Facilities form, which **must** be signed and returned to us (part of Attachment "A").
2. A sample insurance certificate is enclosed (Attachment "B"). **Your insurance certificate should be immediately forwarded to our office via mail or email to Earline Simpson at esimpson@hardaway.net.** Article 10a, of Attachment "A", of your Subcontract Agreement provides information regarding insurance requirements for this project.
3. One (1) copy of W-9 Form (Attachment "C") – Request for Taxpayer Identification Number and Certification.
4. One (1) copy of Application For Payment Instructions (Attachment "D").
5. One (1) copy of our Subcontractor's Invoice Form (Attachment "D-1") for progress billings. This form must be **completely** filled out each month before we can process your progress payments. Please make additional copies as needed. **An excel file is available upon request. Send your request to Blake at bhardaway@hardaway.net.**
6. One (1) copy of our Lower Tiered Subcontractors & Suppliers Form – Attachment "E".
7. One (1) copy of our Conditional/Unconditional Waiver – Attachment "E-1".

NOTE: Items 5 – 7 are required monthly in order for progress payment(s) to be processed.

Your prompt response in the return of the above requested items is appreciated. Please call if you have questions.

Respectfully,

Project Manager

Attachments

TERMS AND CONDITIONS OF THE SUBCONTRACT

ATTACHMENT "A"

Revised 9/20/17

Project Name: xxx
xxx

Project No.: xxxx-xxx

1. GENERAL CONTRACT

- (a) The Contractor has entered into a General Contract with the Owner (hereafter referred to as "the General Contract") for the project described in the Subcontract Agreement. The project is to be constructed in accordance with the terms, conditions, and covenants of the General Contract and in accordance with the Subcontract. The Subcontractor hereby assumes the same obligations and responsibilities with respect to his performance under this Subcontract Agreement that the Contractor assumes toward the Owner with respect to his performance under the General Contract.
- (b) Substantial performance of the General Contract by the Contractor is a condition of the Contractor's obligation under this Subcontract. If the Owner becomes bankrupt or otherwise defaults in his payments to the Contractor under the General Contract, then, upon written notice thereof to the Subcontractor, the Contractor may terminate this Subcontract and will thereupon be liable to the Subcontractor only for the cost of work actually performed and justifiable expense incurred by the Subcontractor up to the time of receipt of said notice solely to the extent those costs and expenses are actually recovered by the Contractor from the Owner. The Subcontractor understands and agrees that payment to the Contractor by the Owner is a condition precedent to the Contractor obligation to pay the Subcontractor.

2. SCOPE OF WORK

- (a) The Subcontractor shall furnish all necessary labor, materials, supervision, services, tools, equipment, transportation, hoisting, shop drawings, samples, and all other services necessary to fully perform and complete the work as described in the Subcontract Agreement. Subcontractor shall carefully coordinate his work with the job requirements and shall furnish at all times sufficient materials, skilled workmen, supervision, and equipment to perform the work to the entire satisfaction of Contractor, so as not to delay the completion of the whole or any part of the work. The work shall be performed in accordance with the construction schedule / milestones and the most current updates to this project schedule. The work shall also be performed in cooperation with the other trades, in a good and workmanlike manner, free from defects, and to the satisfaction and acceptance of the Contractor and Owner, all in accordance with the construction documents and the most current project schedule.
- (b) As a condition precedent to Contractor's payment obligation under this Subcontract, all applicable taxes, business or occupational licenses, permits, fees, and insurances required for the proper performance of the work, shall be furnished and paid for by the Subcontractor and the amount thereof is included in the Subcontract amount. Subcontractor agrees to hold Contractor harmless from all claims, actions, penalties, and / or fines resulting from Subcontractor's failure to comply with this section.
- (c) The Subcontractor represents that he is an independent contractor and agrees to accept full and complete responsibility and liability for the payment of any and all sales taxes, excise taxes, business taxes, social security taxes, medicare taxes, and unemployment compensation taxes upon the material and labor furnished under this Subcontract as required by federal law and the state in which the work is performed.
- (d) No claim shall be made due to minor variations in the actual conditions of the premises from what is shown on the drawings. The Subcontractor shall examine the premises, note and ascertain the existing conditions at the site and the nature and location of the work. All work affected or governed thereby or required for the thorough and satisfactory execution and completion of his work, whether indicated

and specified or not, and regardless of quantity estimated, shall constitute part of this Subcontract and shall be performed without extra charge.

- (e) Shop drawing approval by the Architect and/or Contractor does not relieve Subcontractor and/or supplier of the responsibility of furnishing material and workmanship required by project drawings, specifications and other documents. Any deviations on shop drawings and/or submittal data must be explicitly delineated on the shop drawings and in letter of transmittal to Contractor. Subcontractor must have written approval from Architect or Engineer for all deviations from plans and specifications.
- (f) Subcontractor represents that it has inspected and is fully familiar with the site and the scope of work to be performed by Subcontractor at the site. Subcontractor shall not make any claim based on site conditions, which could have been discovered through a proper site inspection.
- (g) The Subcontractor shall be responsible for all layout, engineering, and field dimensioning required for his work.
- (h) The Subcontractor shall be responsible for all unloading, hoisting, storage, and movement of the materials, tools, and equipment required for the performance of his work.
- (i) The Subcontractor shall do all cutting, fitting, and patching required for his work and shall properly seal all sleeves and penetrations of walls and floors caused by his work.

3. PERFORMANCE

- (a) The Subcontractor shall employ a competent Supervisor who shall be in attendance at the project during the performance of the work. The Supervisor shall be satisfactory to the Contractor and shall not be changed except with the written consent of the Contractor. The Supervisor shall represent the Subcontractor in all matters including, but not limited to all communications, notices, coordination and scheduling, and job meetings. The Supervisor shall also be an agent to speak on behalf of the Subcontractor and legally bind the Subcontractor in the areas of manpower, overtime, equipment, procedures, etc., as required to enable Contractor to schedule, coordinate and manage the project. **The supervisor is required to attend weekly jobsite meetings. Weekly meetings will TBD and held at the job site trailer.**
- (b) The Subcontractor shall at all times furnish adequate skilled labor, materials, tools, and equipment to prosecute the work promptly and diligently in accordance with the current Project Schedule. If the Subcontractor fails to maintain the progress of his work in accordance with the current Project Schedule or delays progress of the project or if in the opinion of the Contractor, the Subcontractor cannot complete his work within the time period set forth, the Subcontractor shall, at no additional cost to the Contractor, take such steps as necessary to improve his rate of production and bring his progress to the level required. These steps may include, but are not limited to, increasing the Subcontractor's labor force, acceleration of performance, shift work, and overtime work.
- (c) The Subcontractor covenants and agrees that he shall not employ any person on the project site who is not acceptable to the Contractor; that there will be no work stoppages or, slowdowns, walkouts, disruptions of work, interferences of work, picketing, or any other disruptions similar in nature during the contraction of this project. If the Subcontractor breaches this covenant and such breach shall cause a stoppage of work at the job site, the Subcontractor shall be liable for all damages suffered by the Contractor caused by such delay in completing the job, including specifically any penalty in the General Contract imposed upon the Contractor for failing to complete the job on the completion date set forth in the General Contract.
- (d) If any part of the Subcontractor's work depends, for proper execution or results, upon the work of any other subcontractor, separate contractor or the Contractor, the Subcontractor shall inspect and promptly report to the Contractor in writing any defects in such work that render it unsuitable for such proper execution and results. Subcontractor's failure to so inspect and report in writing shall constitute

an acceptance of the other subcontractor's, separate contractor's or the Contractor's work as fit and proper for the reception of the Subcontractor's work.

- (e) The Subcontractor shall comply with all laws, ordinances, and regulations regarding the performance of its work and shall turn the work over to the Contractor in good condition and free and clear of all claims or liens arising from the performance of this Subcontract, and shall, at his expense, immediately discharge, transfer from the property to an adequate security, and / or defend all suits and pay all claims arising from his performance of this Subcontract.

4. TIME

- (a) The parties acknowledge that time is of the essence with respect to the work required to be performed hereunder. Therefore, Subcontractor shall: (1) begin the work promptly upon Contractor's order to do so; (2) coordinate and perform the work, and its several parts, diligently and promptly and in such order and sequence as Contractor may from time to time direct and as will assure its efficient and timely prosecution, and will not delay completion of the entire work and its several parts under the Contract; and (3) furnish at all times sufficient, qualified and competent forces and supervision, and adequate conforming and usable materials, equipment, plant, tools, and other necessary things, to achieve progress according to Contractor's current project schedule.
- (b) Without limiting the foregoing, Subcontractor shall: (1) order (for manufacture or purchase and delivery) all materials required for performance of the work as soon as possible in order to avoid delays caused by strikes, transportation or unavailability; (2) furnish Contractor within thirty (30) days a list of major materials and equipment required for the work, showing the name, address and telephone number of the supplier and the date on which such material and equipment is expected to be delivered to the project site; (3) cause a qualified home office supervisory representative (while Subcontractor has forces at the project site and for two weeks prior thereto) to attend weekly progress meetings; and (4) notify Contractor immediately by telephone and confirm in writing within twenty-four (24) hours, if Subcontractor finds that any item cannot be delivered as required to maintain Contractor's project schedule. Subcontractor also agrees to be bound by such modifications to the project schedule. Subcontractor also agrees to be bound by such modifications to the project schedule as are discussed at the weekly job progress meetings and are contained in the minutes of those meetings unless written objection is made by Subcontractor within forty-eight (48) hours of the occurrence of such meeting.

5. EXTENSIONS OF TIME AND DELAY

If Subcontractor is delayed at any time in the progress of the work by any act of neglect of Owner or Contractor, or by any agent or contractor employed by Owner or Contractor, or by changes ordered in the scope of the Work, or by fire, adverse weather conditions not reasonably anticipated, or any other causes beyond the control of Subcontractor, then the required completion date or duration set forth in the project schedule shall be extended by the amount of time that Subcontractor shall have been delayed thereby. However, to the fullest extent permitted by law, Owner, Contractor and their agents and employees shall not be held responsible for any loss or damage sustained by Subcontractor, or additional costs incurred by Subcontractor, resulting from a delay caused by Owner, Contractor, or their subcontractor, agents or employees, or any other contractor, subcontractor or supplier, or by abnormal weather conditions, or by any other cause, and Subcontractor agrees that the sole right and remedy therefore shall be an extension of time provided that Contractor receives the same extension of time from Owner on the General Contract. Subcontractor must submit any claim for an extension of time to Contractor in writing within five (5) working days after the occurrence of the delay-causing event. Subcontractor's failure to give such written notice to Contractor shall deprive Subcontractor of its right to claim an extension of time and any damages or additional costs incurred by Subcontractor resulting from such delay. The giving of such notice shall not of itself establish the validity of the cause of delay or of the extension of time to remedy the delay. In the event a court of competent jurisdiction shall determine that this provision is inapplicable or unenforceable for any reason, then Subcontractor's sole right and remedy shall be the amount received by Contractor from the party causing the delay on behalf of the Subcontractor for each day it is actually delayed by any act or neglect of Owner or Contractor, or by any agent or contractor employed by Owner or Contractor, or by changes ordered in the scope of the work, or by fire, adverse weather conditions not reasonably anticipated, or any other causes beyond the control of Subcontractor. To the extent that this

provision conflicts with any other provision of this Subcontract or the General Contract, or any modifications hereof, then this provision shall govern.

6. CHANGES IN THE WORK AND NOTICE OF CLAIMS

- (a) The Contractor may order or propose changes in the work consisting of additions, deletions or other revisions with the Subcontract amount and time being adjusted accordingly. All such changes in the work shall be by a written Subcontract modification. The Contractor may by a written directive issued and signed by the Contractor's project manager, direct the Subcontractor to proceed with changes in the work, prior to the issuance of a Subcontract modification. Upon receipt of a written directive from the Contractor, Subcontractor shall proceed with the work.
- (b) The Subcontractor shall submit to the Contractor a written detailed estimate of the cost of performing the ordered or proposed changes to the work to include quantities, unit prices, labor rates, manufacturer's and supplier's quotations and all other information required by the Contractor for a complete analysis of the estimate. If the proposed change affects the length of time the Subcontractor requires to complete his work, the Subcontractor shall set forth, in writing, the amount of any justifiable time increase in his proposal. The Subcontractor's proposal shall be promptly submitted to the Contractor.
- (c) Any and all claims for time or money must be presented to the Contractor, in writing, within five (5) working days after the occurrence of the event giving rise to such claim, or within such shorter time as may be required by the General Contract. Subcontractor shall also comply with all provisions of the General Contract for purposes of submitting a claim, including but not limited to all notice provisions. Failure by the Subcontractor to present such claim in writing within five (5) working days after the occurrence and in accordance with the requirements of the General Contract shall be deemed a waiver of such claim and the Subcontractor shall be barred from pursuing such claim against the Contractor. In claims related to actions or requests by the Owner or the Owner's representative, or other subcontractor, the Subcontractor shall not be entitled to any increase in the Subcontract amount for which the Contractor is not entitled to an equivalent increase to the General Contract from the Owner. The Subcontractor agrees to cooperate with the Contractor in seeking adjustments from the Owner in connection with such changes.
- (d) No dispute as to adjustment of the Subcontract amount or time for changed work, shall excuse the Subcontractor from proceeding with such changed work that has been duly authorized by the Contractor.

7. DEFAULT, TERMINATION AND REMEDIES

- (a) Should the Subcontractor at any time (1) fail to prosecute and complete the work in accordance with the current project schedule; (2) fail to diligently and continuously perform his work; (3) fail to correct work determined by the Contractor to be defective; (4) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and / or required quality to perform the work with the skill, conformity, promptness and diligence required hereunder; (5) cause interference, stoppage, or delay to the project or any activity necessary to complete the project; (6) become insolvent; (7) fail in the performance or observance of any of the covenants, conditions, or other terms of this Subcontract; (8) fail to pay for any material or labor used on the project; (9) become involved in a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Subcontractor or his subcontractors or (10) if in the opinion of the Contractor the work of the Subcontractor cannot be completed in the time period set forth; then in such event, each of which shall constitute a default hereunder by Subcontractor, Contractor shall, after giving Subcontractor notice of default and two (2) calendar days within which to cure, have the right to exercise any one or more of the following remedies:
 - (i) The Contractor may immediately take any action Contractor may deem necessary to correct such default, including specifically the right to provide labor, overtime labor, materials,

equipment and / or other subcontractors, and may deduct the cost of correcting such default from any payment due, or that may become due, to the Subcontractor;

- (ii) The Contractor may terminate this Subcontractor and the employment of the Subcontractor, without thereby waiving or releasing any rights or remedies against Subcontractor or its sureties, and take possession of the Subcontractor's materials, tools and equipment used in performing his work, and employ another subcontractor or use the employees of the Contractor to finish the remaining work to be performed hereunder. The Contractor may deduct the costs of completing the remaining work from the unpaid Subcontract price, and if the cost of completing the remaining work exceeds the Subcontract amount, the Subcontractor shall pay to the Contractor such excess costs, including overhead and attorneys' fees;
 - (iii) Recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential (including without limitation any increase in Contractor's cost of insurance resulting from Subcontractor's failure to maintain insurance coverages required hereunder), and all reasonable attorneys' fees suffered or incurred by Contractor by reason of or as a result of Subcontractor's default.
 - (iv) Require the Subcontractor utilize, at its own expense, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's default;
- (b) The Contractor, in any such event, may also refrain from making any further payments under this Subcontract to the Subcontractor until the entire project shall be fully finished and accepted by the Owner. After completion of the work by the exercise of any one or more of the above remedies and acceptance of the work by the Architect and Owner and full payment therefor by the Owner, Contractor shall promptly pay Subcontractor any undisbursed balance of the Subcontract, if any. If the cost of completion of the work, together with any other damages or losses sustained or incurred by Contractor, shall exceed the undisbursed balance of the Subcontract, Subcontractor and its guarantors, surety, or sureties shall pay the difference within fifteen (15) days of written demand from Contractor.
- (c) If the Owner is damaged by reason of any breach by the Subcontractor of this Subcontract, then the Subcontractor shall, subject to any defenses and offsets to which the Subcontractor may be entitled under this Subcontract, pay the Owner such damages.
- (d) Should any default or termination under this paragraph be deemed invalid, wrongful or improper, such default or termination shall be deemed an early termination under Article 9 and Subcontractor rights and remedies against the Contractor shall be limited to the actual direct costs of the work performed up to the date of termination.

8. CONTRACTOR'S RIGHT TO CARRY OUT THE WORK

If the Subcontractor neglects to perform the work in accordance with the most current project schedule or otherwise fails to carry out the work in accordance with the Subcontract Agreement and fails within two (2) calendar days from the date of written notice from the Contractor to correct such deficiency, the Contractor may, without declaring the Subcontractor in default and without prejudice to any other remedies the Contractor may have, correct such deficiencies. In such case, an appropriate deductive change order shall be issued for all costs incurred by Contractor in carrying out such work, including but not limited to attorneys' fees. If the remaining subcontract balance is not sufficient to cover such costs, the Subcontractor shall pay the difference to the Contractor.

9. EARLY TERMINATION

- (a) If Owner terminates the General Contract or stops the work for a reason other than the sole default of Contractor, Contractor may terminate this Subcontractor or stop the work for the same reason, and Subcontractor's rights and remedies, including the basis for payment of any unpaid portion of the subcontract balance, shall be limited to the corresponding rights and remedies available to Contractor under the General Contract with the Owner.
- (b) Contractor shall have the right to terminate this Subcontract by giving written notice to Subcontractor. Upon receipt of written notice from Contractor of such termination, Subcontractor shall cease operations, take actions necessary for the protection and preservation of the work, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders. If Contractor terminates this Subcontract, Subcontractor shall be entitled to receive payment for the actual direct costs of the work incurred up to the date of termination along with a reasonable profit on the completed work, not to exceed 10%. In no event shall Subcontractor be entitled to any indirect costs, delay damages, lost profits, acceleration damages or any other compensation other than direct costs of the work plus a reasonable profit, not to exceed 10%.

10. INSURANCE, LIABILITY & BONDS

- (a) Prior to commencing work, the Subcontractor shall procure and continuously maintain, at its sole cost and expense, the following required insurance, with insurers' financially acceptable and a current A.M. Best's rating of not less than A- VII, unless otherwise approved by the Contractor, and lawfully authorized to do business in all states where work or operations are performed. Such coverage shall protect the Subcontractor and others whom the Subcontractor has agreed to protect under written contract or agreement for liabilities arising from work or operations performed by or on behalf of the Subcontractor, its agents, representatives, employees, or subcontractors. Subcontractor shall furnish Contractor with a certificate of insurance evidencing the required coverages **prior** to the commencement of work or operations. Copies of all forms and endorsements are required and are subject to review and approval. Additional documentation may be required.

Subcontractor's insurance coverage shall include the following minimum limits and coverage unless otherwise required by the contract documents.

- (i) **Workers Compensation and Employers Liability** (Statutory limits at project site specific location). Employers Liability Insurance with limits of at least \$100,000 each accident, \$100,000 disease each employee, and \$500,000 disease aggregate.
- (ii) **Commercial General Liability** insurance with minimum limits of at least \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$2,000,000 products – completed operations aggregate. The general aggregate limit shall apply separately to each project. Insurance to be on an occurrence coverage form, with coverage at least as broad as that provided under the current edition of the *Insurance Services Office Commercial General Liability Policy, CG 0001*[®]. Other than standard exclusions applicable to pollution, asbestos, mold, employment practices, ERISA, and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms which apply to bodily injury, property damage, products and completed operations, contractual liability, or construction defects. In addition to procuring and maintaining this insurance during the duration of the contract, Subcontractor agrees to continue to procure and maintain **products and completed operations** liability insurance coverage for a minimum of one (1) year after the completion of the entire project. **Policy must not contain an exclusion for Exterior Insulation and Finish System (EIFS), if applicable.**
- (iii) **Automobile Liability** with a combined single limit of at least \$1,000,000 each accident. Coverage is to include all owned, hired or non-owned vehicles.

- (iv) **Umbrella Liability (Excess)** insurance with limits of at least \$1,000,000 each occurrence and \$1,000,000 general aggregate. Coverage to follow form of Commercial General Liability, Automobile Liability, and Employers Liability Insurance.
- (v) **Contractors Pollution Liability (if applicable)** with limits of at least \$1,000,000 each incident and a \$2,000,000 policy aggregate. **Policy must not contain an exclusion for mold or microbial matter.** Such coverage shall include defense costs applicable to claims for bodily injury, property damage or clean-up costs. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this agreement, and coverage is continuously maintained during all periods in which Subcontractor performs services on behalf of Contractor. In addition to procuring and maintaining this insurance during the duration of the contract, Subcontractor agrees to continue to procure and maintain **completed operations** liability insurance coverage for a minimum of one (1) year after the completion of the entire project.
- (vi) **Professional Liability (if applicable)** with limits of at least \$1,000,000 each claim and \$2,000,000 policy aggregate. This is required only if Subcontractor's scope of services include architectural, engineering, professional consulting or construction management as determined by Contractor. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this agreement, and coverage is continuously maintained during all periods in which Subcontractor performs professional services for Contractor, and for an additional period of one (1) year after termination of this agreement or the last date such services are performed, whichever comes later. If Subcontractor's scope of work includes environmental engineering or consulting, coverage cannot exclude environmental professional services.
- (vii) **Other Insurance Provisions**
- Hardaway Construction Corp. (Contractor), Project Owner, and Project Architect, including directors, officers, and employees of each, shall each be included as **Additional Insureds** under Subcontractor's Commercial General Liability, Umbrella (Excess), Automobile Liability, and Pollution Liability (if applicable) policies as respects claims or liabilities arising from or connected with Subcontractor's work, operations, and **completed operations**. The Additional Insured endorsements shall be at least as broad as the current editions of the Insurance Services Offices forms CG 2010[®] or CG 2033[®] **and CG 2037[®]**. (If coverage for Additional Insured for ongoing operations is included in the policy form on an automatic basis, a copy of the policy form wording is required to be submitted with the insurance certificate.) The Subcontractor shall provide the Contractor, Project Owner, and Project Architect with status as Additional Insureds under CG 2010[®] or CG 2033[®] during the course of the construction, and under **CG 2037[®]** for **completed operations** for a minimum of one (1) year after the completion of the entire project.
 - Subcontractor's Commercial General Liability, Pollution Liability (if applicable), and Umbrella or Excess Liability insurance coverage, to the extent required or necessary, shall be sole primary insurance, and any insurance or self-insurance maintained by Contractor, Project Owner, and Project Architect, shall be excess of and non-contributory with Subcontractor's insurance. If necessary, Subcontractor agrees that it will amend the other insurance clause in all required insurance, including Umbrella or Excess Liability, to specifically be primary and non-contributory when required under written contract or agreement.
 - The funding of deductibles, self-insured retentions or programs maintained by Subcontractor shall be the sole responsibility of Subcontractor, including amounts applicable to Contractor, Project Owner, or Project Architect as an additional insured. Any self-insured retentions or deductibles in excess of \$10,000 must be declared to and approved by the Contractor.

- Except with respect to the limits of insurance, Subcontractor's required insurance shall apply separately to each Insured or Additional Insured.
 - To the fullest extent permitted by law, Subcontractor agrees to waive all rights of subrogation against Contractor, Project Owner and Project Architect, including directors, officers, and employees in the scope of employment, and shall cause each of its subcontractors to waive all their rights of subrogation against Contractor, Project Owner and Project Architect, including directors, officers, and employees in the scope of employment, for all costs or expenses, losses, damages, claims, suits or demands, howsoever caused. If necessary, Subcontractor agrees to endorse the required insurance policies to permit waivers of subrogation in favor of Contractor, Project Owner, and Project Architect as required hereunder. The above shall be so evidenced on Subcontractor's Certificate of Insurance. Subcontractor further agrees to hold harmless and indemnify Contractor, Project Owner, and Project Architect for any loss or expense incurred as a result of Subcontractor's failure to obtain such waivers of subrogation from Subcontractor's insurers.
- (b) If Subcontractor incurs a loss covered under Builder's Risk, Subcontractor shall be responsible for the deductible or a portion thereof based on their percentage of the total cost of the claim.
- (c) All policies shall provide to the Contractor ten (10) days' notice of cancellation for non-payment of premium and thirty (30) days' notice for all other reasons (subject to state laws and regulations) prior to cancellation. Subcontractor's indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Workman's Compensation Acts, disability benefits acts or other employee benefit acts.
- (d) The Contractor shall have the right to require the Subcontractor to furnish performance and payment bonds for the full amount of the Subcontract price. The Subcontractor shall furnish, by a surety and in a form satisfactory to the Contractor, such bonds to the Contractor, prior to the start of the Subcontractor's work, covering the performance of the Subcontract and the payment of all obligations arising hereunder. The Contractor, upon receipt of the bonds and invoice from the surety, shall pay for the cost of said bonds. Additional bond premiums costs due to modifications to the Subcontract, shall be included in the modification amount submitted by Subcontractor, and paid by Subcontractor.

11. INDEMNITY

To the full extent permitted by law, Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner, as well as any other parties which Contractor is required under the Contract Documents to defend, indemnify and hold harmless, and their agents, servants and employees, from and against any claim, cost, attorneys' fees (including attorneys' fees on appeal), expense, or liability, attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with the performance of the work by Subcontractor, its lower tier subcontractors and suppliers, or their agents servants, or employees.

12. SAFETY

- (a) The Subcontractor shall comply with safety measures initiated by the Contractor and all applicable laws, ordinances, rules, regulations and orders of any local, state and federal public authority relating to the safety of persons and property. The Subcontractor agrees to hold Contractor harmless from all claims, actions, penalties, and/or fines resulting from Subcontractor's failure to comply with this Article.
- (b) The Subcontractor warrants that he is familiar with all aspects of the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA) and assumes responsibility for compliance with 29CFR 1926 and will hold the Contractor harmless for any accidents and damages, or fines and citations resulting from

the administration or enforcement of OSHA, with respect to the performance of The Subcontractors work. Subcontractor grants permission to Contractor to request consultative visits by the appropriate state agency as designated or authorized by OSHA. Subcontractor agrees to cooperate with Contractor and OSHA consultation representative and further agrees to implement any suggested corrective measures within standard written OSHA guidelines.

- (c) Pursuant to the Hazard Communications Standard of 1986, the Subcontractor shall provide the Contractor with the Material Safety Data Sheets for all hazardous materials used by the Subcontractor on the job site as required by OSHA or the state in which the work is being performed; where conflict occurs between the two, the more stringent requirements will be followed.
- (d) The Subcontractor shall immediately report to the Contractor any injury to any of the Subcontractor's employees at the job site.
- (e) The Subcontractor shall ensure to the fullest extent possible, that all his sub-subcontractors and suppliers making deliveries to the job site comply with this Paragraph.
- (f) If the Subcontractor causes unsafe conditions affecting life and safety to exist, and these conditions are not immediately corrected upon receipt of notice from the Contractor, the Contractor may have the unsafe conditions corrected by others and deduct the cost thereof from amounts due or to become due the Subcontractor.
- (g) The Subcontractor shall designate a "competent" person as defined by OSHA to supervise, perform inspections and initiate corrective action as required by OSHA construction standards, including but not limited to, excavation, trenching, steel erection and scaffolding.
- (h) The project site is a Drug Free Workplace. As such, the consumption of, or being under the influence of alcohol or controlled substances, is strictly prohibited. If there is reasonable cause to suspect that an employee of the Subcontractor is in violation of this policy, that employee will be removed from the project site. This obligation requires Subcontractor to make a good faith effort to prevent the carrying, use, exchange of alcohol or drugs and other substances that may impair the performance of the employee. A good faith effort shall include, but is not limited to the Subcontractor implementing a written alcohol and substance abuse policy and program administered by it or by a professional program operator. Contractor reserves the right to approve any such program implemented by the Subcontractor.

13. PAYMENT

- (a) The payment terms and conditions set forth below and contained elsewhere in this Subcontract Agreement shall supersede and take precedence over any conflicting terms which may be contained in the General Contract.
- (b) Within ten (10) business days after the execution of this Subcontract, the Subcontractor shall submit to the Contractor a schedule of values allocated to the various portions of the work, prepared in such form and supported by such data as the Contractor may require.
- (c) Requisitions for progress payments shall be submitted by the 25th day of the month. Unless items of the Subcontractor's requisition for payment are in dispute, the Contractor shall pay the Subcontractor within ten (10) business days of Contractor's receipt of payment from the Owner, which is an express condition precedent to the Contractor's payment obligations to the Subcontractor. The Contractor may require evidence that the unpaid balance, exclusive of retainage, is at all times sufficient to complete the Subcontractor's remaining work and pay any unpaid claims for which the Subcontractor may be liable. All such monthly payments shall be subject to a five (5) percent retainage.
- (d) As a condition precedent to the Contractor's payment obligations to the Subcontractor, the Subcontractor's requisitions for monthly progress and final payments shall be submitted on the form as provided by the Contractor and shall be accompanied by valid lien waivers covering the amount of

all materials, equipment rentals, services and sub subcontractors reflected in the previous month's requisition unless otherwise provided for in the General Contract. The Subcontractor shall immediately discharge, transfer from the property to an adequate security, and defend any liens or claims arising from his performance of this Subcontract.

- (e) Subcontractor hereby agrees that, by the requisition of monthly progress payments, Subcontractor shall be deemed, as of the date of each such requisition and in consideration of each such requisition:
 - (i) to certify to Contractor that all charges for labor, material and services of every nature in connection with this Subcontract in the amount of such requisition have been paid in full or will be paid in full with the proceeds of such requisition, and that there will remain no charge by any subcontractor, vendor, or individual furnishing labor or material in connection with this Subcontract to the date of such requisition for which a lien could be filed, arising out of or in any way relating to this Subcontract.
 - (ii) to release and forever discharge the Contractor from any and all obligations and liabilities, and release and waive any and all claims and demands, or rights thereto, of every kind and character whatsoever against the Contractor, the Owner, the Project and the subject premises, arising out of or in any way relating to this Subcontract (including modifications thereto, whether oral or written, and extras, if any) through the date of such requisition: and
 - (iii) to agree to cause any lien against the Project or the subject premises to be discharged or satisfied, and to indemnify and hold harmless the Contractor and the Owner against any claim, loss or damage, arising out of or in any way relating to this Subcontract through the date of such requisition.
- (f) Progress and final payments may, in the discretion of the Contractor, be made in the form of checks payable jointly to the Subcontractor and any sub-subcontractor, supplier or person performing labor or services for the Subcontractor. The Subcontractor agrees to accept the issuance of joint checks and agrees with the Contractor that neither the right to issue nor the issuance of any joint check is intended to create any contractual relationship with a third party, or any third party beneficiary rights to payment by the Contractor.
- (g) The final payment, consisting of the unpaid balance of the Subcontract amount, shall be made within ten days after receipt by the Contractor of final payment from the Owner and after all the following conditions are satisfied:
 - (i) Completion of the work by the Subcontractor and acceptance thereof, by the Contractor, Owner, and Architect.
 - (ii) Final payment by the Owner to the Contractor under the General Contract.
 - (iii) Furnishing of evidence satisfactory to the Contractor and Owner that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred in connection with the work.
 - (iv) Consent of surety, if any, to final payment.
 - (v) Furnishing of a general lien release in a form satisfactory to the Contractor and Owner, executed in favor of the Contractor and Owner.
 - (vi) Delivery of all guarantees, warranties, bonds, instruction manuals, as-built drawings, attic stock materials and other items as required by the Subcontract Documents.
- (h) The Subcontractor understands and agrees that the Owner's payment to the Contractor of all progress payments and final payment for any work performed by the Subcontractor, other subcontractors and the Contractor, shall be an express condition precedent to any obligation of the Contractor to make any progress payments or final payment to the Subcontractor.

- (i) If permitted by contract documents, payment for stored materials will be made for value of stored materials exclusive of overhead and profit or any other mark-up. Copies of invoices from supplier (showing price paid by Subcontractor) must be submitted with application for payment to substantiate value of stored materials. Certificates of Insurance for stored materials not stored on site must be provided; Certificate must make specific reference to stored materials in question the project name/address, and name Hardaway or the Owner as a "Loss Payee". Cost of Certificate of Insurance is to be paid by Subcontractor.

14. ASSIGNMENT

Subcontractor shall not assign this Subcontract, or any monies due or to become due hereunder, or subcontractor any substantial part of the work without the prior written consent of Contractor. No assignment by Subcontractor of any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Subcontractor under this Subcontract. If Contractor gives written consent to an assignment of this Subcontract, in whole or in part, Subcontractor shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Subcontractor from engaging subcontractors to perform a portion of the work hereunder. However, Subcontractor shall be and remain as fully responsible for all persons directly or indirectly employed by such contractors, as Subcontractor is for its own acts and omissions and those of its agents, servants and employees.

15. SETOFF

If Subcontractor is, or hereafter begins, performing any other work, wherever located, for Contractor and the unpaid balance of the other work becomes insufficient to complete the other work or compensate Contractor for any damages or deficiencies by the Subcontractor in the performance of the other work, Subcontractor hereby, consents and agrees to allow Contractor, in its sole discretion and judgment, to setoff any of Contractor's claims against any funds due, or which may become due, Subcontractor under any other agreement with Contractor, or any subcontract on any other project. No refusal or failure of Contractor to exercise its rights hereunder shall constitute the basis of any right or claim against Contractor.

16. DISPUTES

- (a) In the event of a dispute between the Contractor and Subcontractor arising out of or relating to this Subcontract, or the breach thereof, which involves the rights or duties of the Owner, the dispute(s) shall be decided in accordance with the General Contract, and Subcontractor, its suppliers, subcontractors, guarantors and sureties shall be bound to the Contractor to the same extent the Contractor is bound to the Owner by the terms of the General Contract and by any decisions or determinations made under the General Contract by an authorized person, board, court, arbitration, or other tribunal. Such disputes include, but are not limited to, any claim the Subcontractor may have related in whole or in part on the conduct of the Owner, its employees or agents. Subcontractor shall be afforded a reasonable opportunity to present information and testimony involving its rights and shall be solely responsible for the presentation of any information or testimony concerning its claims. Subcontractor shall cooperate with Contractor and Contractor's attorneys, employees and agents in the presentation of Subcontractor's information and testimony.
- (b) Any dispute between Contractor and Subcontractor, not involving the Owner or the Owner's conduct shall be governed and decided pursuant to Article 17.
- (c) Subcontractor agrees to continue performance of its work despite the existence of disputes with the Contractor. The existence of a dispute with the Contractor shall not be sufficient cause or justification for any failure by Subcontractor to perform its work.

17. CHOICE OF LAW AND VENUE

- (a) This Subcontract shall be construed according to the laws of the State of Tennessee. Any disputes arising from or concerning this Subcontract, which does not involve the rights or conduct of the Owner and is not, therefore, controlled by Article 16 above, shall be litigated in Nashville, Tennessee, Davidson County Circuit or Chancery Court. Both parties acknowledge that Davidson County Circuit or Chancery Court shall have exclusive jurisdiction and venue over any dispute arising under this Subcontract. The prevailing party in any such action shall be entitled to an award of all attorneys' fees and costs.
- (b) Should either party file any action or arbitration against the other party arising out of a dispute under this Subcontract requiring the matter to be litigated in any place other than Davidson County, that party shall pay all costs incurred by the other party, including attorneys' fees, incurred in dismissing and/or transferring the venue of such matter to Davidson County.
- (c) Contractor and Subcontractor may mutually agree in writing to arbitrate any dispute arising from or concerning this Subcontract.

18. NOTICES

All written notices provided for in this Subcontract or in the Contract Documents shall be deemed given if delivered personally to a responsible representative of the party, sent by facsimile, sent by electronic mail, or by regular mail to the party at its address specified herein. Either party may from time to time by notice to the other as herein provided, designate a different address to which notices to it should be sent.

19. SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Subcontractor shall immediately (within no more than 10 days unless otherwise agreed) prepare or obtain and promptly submit to Contractor shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports and engineering calculations, all as may be required by the Contract Documents or as may be necessary or appropriate to describe the details of the work. Any required field measurements shall be verified by the Subcontractor at the project site prior to ordering or fabricating materials or performing work dependent on such field measurements. Approval of drawings or other submittals by Contractor or Architect shall not relieve Subcontractor its obligation to perform the work in strict accordance with the Contract Documents or its responsibility for the proper matching of the work to contiguous work.

20. CLEANING UP

Subcontractor shall, at its own expense: (1) keep the premises at all times free from waste materials, packaging and other debris accumulated in connection with the work by collecting and removing such debris from the job site on a daily or other basis requested by Contractor, (2) at the completion of the work in each area, sweep and otherwise make the work and its immediate vicinity "broom-clean", (3) remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Contractor at the completion of the work; and (4) at final inspection clean and prepare the work for acceptance by Owner. Subcontractor agrees to provide all cleaning and cleanup required under the Contract Documents pertaining to the work to the extent such requirements are in excess of those contained in this paragraph. In the event of failure of the Subcontractor to do so, the Contractor may, after two (2) hours notice to the Subcontractor, clean up the premises at the cost and expense of the Subcontractor.

21. WARRANTY

Subcontractor warrants its work to the Contractor on the same terms and for the same period as the Contractor warrants the work to the Owner under the General Contract; and, with respect to Subcontractor's work, Subcontractor shall perform all warranty obligations and responsibilities assumed by the Contractor under the General Contract. Without limiting the foregoing or any other liability or obligation with respect to the work, Subcontractor shall, at its expense and by reason of its express warranty, make good any faulty, defective, or improper parts of the work discovered within one year from the date of acceptance of the project by the Architect and Owner or within such longer period as may be provided in the General Contract, project

specifications or other Contract Documents. Subcontractor warrants that all materials furnished hereunder meet the requirements of the Contract Documents and impliedly warrants that they are both merchantable and fit for the purposes for which they are to be used under the Contract Documents.

22. MISCELLANEOUS

- (a) The Subcontractor shall protect his finished work against damage by other trades and shall be liable for damage caused by him to the work of others. The Subcontractor shall pay as directed by the Contractor, the cost of replacement or repair to the work of other trades damaged by him or occasioned by the correction of his defective work and should the Subcontractor fail to do so, the Contractor may, at his option, backcharge the Subcontractor for same. Damage to the completed work, when done by an unknown party, shall be paid for equally by all parties working in or storing materials in the area where the damage occurred. The Contractor will initiate this procedure if liability and acknowledgement cannot be obtained from a responsible third party.
- (b) The Subcontractor shall be responsible for the location of and / or damage caused by him to any underground objects, including but not limited to sewer, water, gas, electric or telephone lines, cables, pipes and tunnels.
- (c) No inspection, approval or acceptance of work, or approval of a requisition for payment by the Contractor or Owner, nor any progress payment, nor partial or entire use or occupancy of the project by the Owner, shall constitute an acceptance of any work not in accordance with the Subcontract Documents.
- (d) No action or failure to act by the Contractor shall constitute a waiver of a right or duty afforded to the Contractor under this Subcontract Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in writing by the Contractor.
- (e) This instrument and the documents specifically incorporated herein by reference represent the entire agreement between the Contractor and Subcontractor and supersede prior negotiations, representations, agreements either written or oral. Terms and conditions of proposals, quotations, delivery tickets, invoices, work orders and other similar items, unless specifically made a part of this Subcontract Agreement, shall not be applicable. This Subcontract may be amended only by a written modification signed by both parties.
- (f) Subcontractor accepts Hardaway's policy of "Certification of Non-Segregated Facilities" and further agrees to obtain identical certification from proposed Subcontractors prior to the award of Subcontracts exceeding \$10,000. Hardaway Construction Corp. is an equal opportunity employer and will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 and with the rules, regulations, and relevant orders of the Secretary of Labor.
- (g) Where any material, process, or method of operation or applicable procedure is required which, in the opinion of the Subcontractor, would render the finished work unsuitable for the required Warranty, the Subcontractor, before any work is started, shall object in writing to the General Contractor stating his reasons therefore and recommending other substitute methods so that work, when complete, will be suitable for the required Warranty. In the event the Subcontractor's recommendation is approved, the work shall be installed in accordance therewith at no change in cost unless otherwise authorized in writing.
- (h) Subcontractor hereby attests, certifies, warrants, and assures that the Subcontractor shall not knowingly utilize the services of an illegal immigrant at any time during the performance of this Subcontract and shall not knowingly utilize the services of any sub-subcontractor who will utilize the services of an illegal immigrant at any time during the performance of this Subcontract.

23. CERTIFIED PAYROLL

- (a) Subcontractor shall adhere to the requirements and documentation required to comply with the State of Tennessee Prevailing Building Wage Rates Decision Number T-33096 dated 05/07/10. A complete Wage Scale and payroll packet is enclosed for Subcontractor's use. The work to be performed is located in the State of Tennessee.
- (b) Certified Payrolls are a requirement of this Subcontract Agreement and shall be submitted to Hardaway WEEKLY. Subcontractor's payroll department shall carefully review the enclosed information packet and forms. Subcontractor shall submit to Hardaway all preliminary documentation forms prior to the first payroll submittal. In weeks where no work is performed by the Subcontractor a payroll form will still be required with a notation of "No Work This Period" written on the payroll form. Upon completion of all work, a payroll form will be required with a notation of "Work Complete" written at the end of the last pay period submitted.
- (c) Payment to Subcontractor for work completed each month may be withheld if these Certified Payrolls are not kept current and submitted to Hardaway on a weekly basis.

CERTIFICATION OF NONSEGREGATED FACILITIES

By acceptance of this Purchase Order or Subcontract, the vendor or Subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. The vendor or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities.

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semi-annually or annually).

Vendor or Subcontractor

Address

By

Title

Date

USE THIS FORM ONLY TO AVOID A DELAY IN PAYMENT FROM HARDAWAY CONSTRUCTION

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer
Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:
 Individual/sole proprietor or single-member LLC
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____
 Other (see instructions) ▶ _____
 C Corporation
 S Corporation
 Partnership
 Trust/estate

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
 Exempt payee code (if any) _____
 Exemption from FATCA reporting code (if any) _____
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)
 Requester's name and address (optional)
Hardaway Construction Corp.
Email: shutchens@hardaway.net
Fax: Att: Susan 615-256-4545

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number										
				-			-			

OR

Employer identification number										
			-							

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶

COMPLETE THE FOLLOWING:

A. To meet government Regulations, we allow subcontractors and vendors to identify themselves as a Disadvantaged Business Enterprise (DBE). If your company is certified as a DBE, please select the type of DBE below (check those that apply):

- | | |
|---|---|
| _____ (S) Small Business (typically SBA 8(a)) | _____ (M) Minority-owned Small Business |
| _____ (V) Service-Disabled Veterans Owned | _____ (W) Women-Owned Small Business |
| _____ (H) HubZone Small Business | _____ None |

B. If you are a Subcontractor, IN ORDER TO AVOID A DELAY IN PAYMENT, please fill out 1) or 2) below:

1) Tennessee Contractor's License # _____

OR

2) TN Business Tax License # _____ City: _____ County: _____

PLEASE RETURN THIS FORM WITH A COPY OF YOUR LICENSE (1 or 2).



ATTACHMENT "D"
APPLICATION FOR PAYMENT INSTRUCTIONS

Applications for progress payment will not be processed until the subcontract and any change orders, if applicable, have been executed and the payment application includes the following:

- 1) The completed Subcontractor's Invoice and Lien Waiver. Attach a schedule of values or other supporting documentation. If you have any questions about this form, please call Accounts Payable at 615-254-5461.**
- 2) Attachment E-1 Conditional & Unconditional Waiver and Release Form to be completed by lower-tiered equipment & material suppliers and lower-tiered subcontractors.**
- 3) List of Lower-Tiered Subcontractors and Suppliers IF this has changed since the form was sent in last.**

INVOICES MUST BE RECEIVED BY THE 25th OF EACH MONTH.

**EMAIL to: HardawayAP@hardaway.net
DO NOT SEND ORIGINALS BY MAIL.**

LIEN WAIVER

STATE OF _____
COUNTY OF _____

Affiant, _____, being first duly sworn, states and deposes as follows:

That he / she is the _____ of _____
(Subcontractor)

being duly authorized to do so, certifies and represents under oath that all amounts for labor, materials, and equipment furnished and / or purchased for the project prior to this application for payment have been paid in full; that Subcontractor hereby fully waives and releases all rights of lien for all of such amounts; and that Subcontractor shall not bring or file any action of claim against Hardaway Construction Corp.

(Subcontractor)

BY: _____
(signature)

TITLE: _____

DATE: _____



**MONTHLY
List of Lower-Tiered Subcontractors and Suppliers**

SUBCONTRACTOR: _____ **DATE:** _____

PROJECT: _____ **PROJECT #:** _____

List ALL Lowered-Tiered Contractors, Individuals, and/or Suppliers that will be employed or will be used by your firm on the above referenced Project. (Do not list direct employees of your company.)

To be filled out by the Subcontractor and Returned to HARDAWAY CONSTRUCTION'S Project Manager at the beginning of the project and monthly (with subcontractor's invoice).

<i>TRADE</i>	<i>FIRM</i>	<i>ADDRESS</i>	<i>PHONE</i>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Subcontractor / Supplier Signature

Revised 9/20/17



TO BE COMPLETED BY LOWER-TIERED EQUIPMENT & MATERIAL SUPPLIERS AND SUBCONTRACTORS

PROJECT: _____ Name & Address, the "Project"
 OWNER: _____ Owner Name, the "Owner"
 CONTRACTOR: _____ the "Contractor"
 SUBCONTRACTOR of the Contractor: _____ the "Subcontractor"
 SUBCONTRACT #: _____
 LOWER-TIERED SUPPLIER OR SUBCONTRACTOR: _____, the "Company"

**CONDITIONAL (current period)
 WAIVER AND RELEASE UPON PROGRESS PAYMENT**

Upon receipt by the Company of a check from or on behalf of the Subcontractor in the sum of \$ _____ payable to the Company and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's liens, stop notice or bond rights that the undersigned has on said Project against the Owner, Contractor, Subcontractor or the surety of any payment or performance bond issued in regard to the Project to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished through _____ only (herein the "Release Date"), and does not cover any retainage retained before or after the Release Date, extras furnished before the Release Date for which a change order has not been received and extras or items furnished after the Release Date.

Rights based upon work performed, items furnished or extras under a written change order which has been fully executed by the parties prior to the Release Date are covered by this release unless specifically reserved by the Company in this release. Except as set forth herein, this release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

**UNCONDITIONAL (prior payment)
 WAIVER AND RELEASE UPON PROGRESS PAYMENT**

On _____, the Company has been paid and received a progress payment in the sum of \$ _____ for labor and services, equipment, or materials furnished to the Owner, Contractor, Subcontractor on the Project. The undersigned does hereby release pro tanto any mechanic liens, stop notice or bond rights that the undersigned has on said Project or against such Contractor, Owner, Subcontractor and surety of any payment or performance bond issued in regard to the Project through _____ (the "Release Date"), only and does not cover any retention or items furnished after the Release Date.

NOTICE: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

The Company agrees to indemnify, defend and hold harmless Hardaway Construction Corp. against any loss or damage, including reasonable attorneys' fees and legal expenses which Hardaway Construction Corp. may sustain, by reason of falsity or inaccuracy of any of the foregoing statements, acknowledgments and representations of the Company, or by reason of the filing of any claim(s), lien(s), or other action(s) against the Project or the Owner by the Company.

COMPANY: _____ DATE: _____ PHONE: _____

BY: _____ (Signature) _____ (Title) PRINTED NAME: _____

NOTARY SECTION

_____, with who I am personally acquainted, and who acknowledged that he/she executed this document, and who further acknowledged that he/she is the _____ of _____ personally appeared before me, _____, a Notary Public.

WITNESS my hand at office this _____ day of _____, 20_____.

My Commission expires _____ Signature: _____

(Notary Public)