



## MASTER SUBCONTRACTOR AGREEMENT

THIS MASTER SUBCONTRACTOR AGREEMENT (hereinafter "Master Agreement") is entered into this     day of     20     between CLARK CONSTRUCTION Inc, a Washington limited liability company (hereinafter "Contractor"), and \_\_\_\_\_, a Washington corporation (hereinafter "Subcontractor").

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN MADE, CONTRACTOR AND SUBCONTRACTOR AGREE AS FOLLOWS:

1. **MASTER AGREEMENT:** The parties hereto agree that from the date hereof until this Master Agreement is terminated, Contractor may contract with Subcontractor for the furnishings of materials and/or the performance of various work on projects (the "Project" or "Projects") being constructed by Contractor. The parties further agree that this Master Agreement shall control their respective rights, responsibilities and privileges which arise out of the Subcontractor furnishing materials and/or performing any work on Contractor's construction Projects.

It is the intent of the parties that the terms and conditions of this Master Agreement will apply to any provisions or services by Subcontractor regardless of whether these terms and conditions are referenced in any purchase order or subsequent Project Release (in the form of Exhibit A, attached hereto), etc. during the term of this Master Agreement.

Entering into the Master Agreement shall not obligate Contractor or Subcontractor to agree to any subsequent request for services or to any volume of business during the term of the Master Agreement. The intent is that if any services are procured and agreed to by both parties during the term of this Master Agreement, the terms and conditions of this Master Agreement shall apply. Where this Master Agreement and the Project Release conflict, the Project Release shall take precedence on only that certain Project to which it is referenced.

2. **SUBCONTRACTOR INFORMATION:** Subcontractor shall provide the following information as part of the Master Agreement:
- . A current copy of its contractor's registration
  - . Certificate of Insurance naming Clark Construction Inc. as an additional insured
  - . A completed W-9 form

Subcontractor shall complete the following information as part of this Master Agreement:

LEGAL NAME OF COMPANY: \_\_\_\_\_  
ADDRESS, CITY, STATE & ZIP: \_\_\_\_\_  
OFFICE TELEPHONE NUMBER: \_\_\_\_\_  
FAX NUMBER: \_\_\_\_\_  
MAIN CONTACT NAME: \_\_\_\_\_  
MAIN CONTACT CELLPHONE NUMBER: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

WASHINGTON MASTER LICENSE NUMBER: \_\_\_\_\_

CONTRACTOR REGISTRATION NUMBER: \_\_\_\_\_ EXP. DATE \_\_\_\_\_

STATE INDUSTRIAL INSURANCE NUMBER (UNEMPLOYMENT  
INSURANCE NUMBER): \_\_\_\_\_

SUBCONTRACTOR INSURANCE COMPANY: \_\_\_\_\_

INSURANCE AGENT & COMPANY: \_\_\_\_\_

AGENT PHONE NUMBER: \_\_\_\_\_

**3. PROJECT MANAGEMENT:** The Subcontractor shall designate a competent superintendent who shall be physically present or readily available to the project site and shall be authorized to act for Subcontractor in all respects, as required. This person shall be accessible to Contractor by telephone during normal business hours Monday thru Friday or during the hours to which the Subcontractor is working. Subcontractor's superintendent shall be experienced, fully able to communicate with Contractor, trained, knowledgeable as to the Project, and shall have full authority to act for and bind Subcontractor. Subcontractor's superintendent shall be satisfactory to Contractor, and shall not be changed without Contractor's prior written consent.

**4. GENERAL CONDITIONS:**

- A. Subcontractor agrees to perform all of its obligations in strict accordance with the terms of this Master Agreement and in strict accordance with any contract and/or agreement between Contractor and any Owner of the Project, and in complete satisfaction of such contract and/or agreement between Contractor and such Owner. Such contract and/or agreement, to the extent applicable to Subcontractor's Work, shall be deemed to be a part of this Master Agreement.
- B. Subcontractor shall be responsible for performing field measurements and verifying dimensions on drawings.
- C. Subcontractor shall regularly remove all refuse, waste and debris produced by its operations. Refuse may not be permitted to accumulate to the extent that it interferes with free access to the work site or creates a safety concern. Avoidance of safety hazards through good housekeeping is a material part of the subcontractor's obligations. The subcontractor shall dispose of all debris as directed by the job site superintendent or as otherwise stated in a work order. Should the subcontractor fail to promptly comply with the cleanup, the subcontractor agrees that Contractor may charge Subcontractor a cleanup fee, which will include but not be limited to, all labor at the rate of \$150 per hour, equipment removal and all disposal fees, plus an administration fee of \$100.00.
- D. Materials delivered by Subcontractor to the job site must be delivered pursuant to Contractor's job superintendent's instructions. Subcontractor shall protect its unfinished work against loss or damage by others. Subcontractor is responsible for all loss or damage to materials or equipment furnished to the Subcontractor by Contractor. Subcontractor is responsible for proper use and handling of materials and is further responsible for damage of any kind caused by Subcontractor or his agents to the structure or work site premises.
- E. Subcontractor will not sublet or assign any work without the prior written consent of Contractor.

- F. Job damage caused by Subcontractor to work other than its own shall be reported immediately to Contractor, and Subcontractor shall be responsible for the cost of its repair.
- G. Any sub-tier subcontractor shall be bound to Subcontractor to the same extent Subcontractor is bound to Contractor and the same extent Contractor is bound to Owner. This Master Agreement may be used by Subcontractor for agreements with sub-tier subcontractors.
- H. All of Subcontractor's work shall be performed in a safe and workmanlike manner and must conform to any Contractor policies provided to Subcontractor and/or its employees and/or agents as well as all federal, state, WISHA, OSHA, and local building codes. Subcontractor shall provide to its employees all safety equipment required to perform the work unless previously agreed in writing that Contractor will furnish the required safety equipment. Subcontractor shall develop and enforce an accident prevention program together with the site-specific plans consistent with the Washington Industrial Safety and Health Act. Subcontractor shall comply and shall enforce compliance with all safety rules promulgated pursuant to its accident prevention program or safety plan pursuant to WISHA requirements. Subcontractor shall ensure that all sub-subcontractors have reviewed Subcontractor's SSSP (site specific safety plan) and disciplinary schedule and shall ensure compliance for any failure or deficiency. Disciplinary action shall not be contingent upon the issuance of a WISHA citation. In order to effectively promote safety at the work site, Subcontractor shall identify, prior to commencement of work, an employee or officer of Subcontractor who is responsible for job site safety, and such employee or officer shall report to Contractor and respond to all inquiries or concerns of Contractor during the course of the work. Subcontractor and lower-tier subcontractor employees shall be drug and alcohol free when on site. Contractor's superintendent may direct the Subcontractor's superintendent to remove employees not in compliance with the preceding safety requirements of this Master Agreement. In the event the Subcontractor does not promptly correct its safety violation, Contractor may order the Subcontractor to stop all work until violation is corrected. Subcontractor will be responsible for all costs incurred due to work stoppage for a safety violation caused by Subcontractor.
- I. Subcontractor shall comply with any additional health, wellness, and safety requirements that Contractor has implemented. Contractor reserves the right to change or add at its discretion. Written notification will be provided by Contractor of any changes to its health, wellness, and safety protocols. All inquiries regarding Contractors protocols shall be directed to [HR@clarkconstruct.com](mailto:HR@clarkconstruct.com).
- J. Upon execution of this Master Agreement, Subcontractor acknowledges receipt of and acceptance of the Subcontractor Safety Orientation packet found here [https://clarkconstruct.com/wp-content/uploads/Sub/Sub-Orientation-\(ENGLISH\).pdf](https://clarkconstruct.com/wp-content/uploads/Sub/Sub-Orientation-(ENGLISH).pdf). (Spanish Version: [https://clarkconstruct.com/wp-content/uploads/Sub/Sub-Orientation-\(SPANISH\).pdf](https://clarkconstruct.com/wp-content/uploads/Sub/Sub-Orientation-(SPANISH).pdf)). Subcontractor understands and agrees that this is not in conflict with any other provision of this Master Agreement.
- K. Subcontractor shall provide Contractor with immediate notice of any safety hazards, violations, or concerns found on the job site or of any injury to its own or its lower-tier subcontractors' workers incurred on the job site. When and as requested by

Contractor, Subcontractor shall promptly provide information regarding safety matters.

- L. The Subcontractor shall be responsible for all taxes, licenses, fees, social security, workman's compensation, employee wages and benefits, unemployment taxes, all other taxes, premiums or assessments, relating to the performance of the Subcontractor's obligations to Contractor.
- M. Contractor shall give to Subcontractor advanced notice of the anticipated starting date for the Subcontractor's work. Contractor shall consult with Subcontractor on development and update of a construction schedule at Subcontractor's request. Subcontractor shall start work on the date named by Contractor as time is of essence, and shall complete its work at such times as will enable Contractor to fully complete its work according to the overall Project schedule. Subcontractor shall cooperate with Contractor and other subcontractors. Subcontractor agrees to perform its work in accordance with the Project schedule.
- N. If Contractor is fined by Labor & Industries or other government agency based upon safety violations of the Subcontractor, the Subcontractor shall reimburse Contractor for any fines so levied against Contractor and related expenses incurred by Contractor.
- O. Contractor may offset any amounts owed to the Subcontractor on one Project with offsets or back charges against the Subcontractor on another Project.
- P. Subcontractor will provide a single point of contact for its Project accounting. Subcontractor will provide a billing schedule and a schedule of values for its scope of work. Subcontractor is responsible for submitting invoices through Procore on or prior to the 25<sup>th</sup> of each month that Subcontractor has performed work on the project. Invoices not submitted through Procore may be subject to, but not limited to, administration fees. All questions regarding Procore billing procedures should be directed to [IT@clarkconstruct.com](mailto:IT@clarkconstruct.com). Contractor may withhold payment until all required documents from Subcontractor have been received and approved by Contractor.
- Q. Contractor utilizes a cloud-based project management software ("PM Software"). Upon execution of this Master Agreement, Contractor will add Subcontractor to the PM Software's directory and send invitation to Subcontractor. It is Subcontractor's responsibility to create user accounts for its Agents and Employees. All project design documents are managed through this PM Software, and it is Subcontractor's responsibility to ensure work being performed is per current documents.

**5. SCHEDULE OF WORK:** Subcontractor shall furnish manpower, materials, facilities, and equipment and shall work such hours as may be necessary to insure completion of the work in accordance with the approved and currently updated progress schedule. If in-place work falls behind the current updated and approved schedule and it becomes apparent to Contractor from the current schedule that the work will not be completed within the contract time, Subcontractor agrees to take, as necessary, some or all of the following actions at no additional cost to Contractor to improve Subcontractor's work progress: (1) Increase manpower in such quantities and crafts as will substantially eliminate the backlog of work; and (2) Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination of the foregoing sufficiently to substantially eliminate the backlog of work. Subcontractor shall keep Contractor fully advised at all times of any pending or

possible delays in deliveries or work accomplishments that could affect immediate or long-range scheduling of the Project/s.

Subcontractor shall work during the regular business hours as established by the Contractor's job superintendent. Only upon written approval of the Contractor's job superintendent can Subcontractor work outside of these hours. Should Subcontractor deem necessary to work outside of these hours to improve Subcontractor's work progress, Contractor may elect to require that Contractor be on site during this off-hour work to which Subcontractor shall reimburse Contractor the cost of having a Contractor's job supervisor on the Project for Subcontractor's work. If Contractor elects to allow Subcontractor to work without Contractor being on site, Subcontractor's work is performed at the Subcontractor's own risk. Any work that is performed after hours will be revised at the Subcontractor's expense if work completed outside regular hours is deemed unacceptable by the Contractor's job superintendent.

**6. SCOPE OF WORK:** The Subcontractor agrees to perform, supply and finish in a thorough and workmanlike manner all work contracted for each Project. All work must meet or exceed all applicable building codes and regulations adopted by the governmental jurisdiction in which the Project is located and must meet Contractor standards of quality and workmanship to the reasonable satisfaction of Contractor. The Subcontractor shall supply all equipment, tools, utilities, machinery, scaffolding and safety devices, etc. as required at its own expense. All engineering details and specifications must be met as outlined and presented on plans and specifications per design.

**7. TERMINATION:** Either party may terminate this Master Agreement for convenience upon 30 days written notification, provided however, that in the event the Subcontractor is not in default for a Project, this Master Agreement shall be in effect until the completion of the remaining work in progress for the Project.

**8. SITE READINESS:** If the Subcontractor enters onto a job site that has not been cleaned by the prior workman, the Subcontractor shall contact Contractor immediately by sending email to the project specific email address listed in the Project Release. Subcontractor's email shall detail the site conditions or substrate deficiencies and the necessary cleanup. If Subcontractor does not notify Contractor of any site conditions or substrate deficiencies immediately and commences work, Subcontractor assumes all responsibilities or additional costs. It is the Subcontractor's responsibility to ensure that the site is ready for the next Trade. If the site is not left in the condition that allows the next Trade to effectively perform their work, Subcontractor will be responsible for any additional costs incurred by Contractor or next Trade related to improving the condition of the site to a workable state. Contractor will provide written notification allowing 24 hours for Subcontractor to correct the site conditions. By commencing work under this Master Agreement, the Subcontractor accepts the site conditions as previously performed by others and the existing substrates.

**9. PAYMENT:** Invoices shall include only that work that has been performed on or prior to the 25<sup>th</sup> of the month. Amounts invoiced for materials are limited to only those materials that are on site as of the 25<sup>th</sup> day of the month. Subcontractor shall notify Contractor of materials that require a deposit or early payment in a timely manner. Subcontractor shall reimburse Contractor for all expenses related to any delays incurred to the Project Schedule due to Subcontractor's untimely notification of deposit or early payment. Contractor shall pay Subcontractor's invoice

less any offsets or deductions on the 10<sup>th</sup> day of the month, following receipt of Subcontractor's invoice for work performed and following completion of said work and furnishing of materials by the Subcontractor, provided that the Subcontractor has complied with the following conditions precedent:

- A. Subcontractor is not in breach of this Master Agreement.
- B. Subcontractor's invoice has been received by Contractor no later than the close of the business day on the 25<sup>th</sup> day of the month.
- C. Subcontractor's invoice is submitted through Procore Pay Application (Exhibit A) and emailed to [accounting@clarkconstruct.com](mailto:accounting@clarkconstruct.com). Work is fully completed and to the satisfaction of Contractor or is partially completed to a stage commensurate with the Subcontractor's invoice.
- D. Contractor's office has a current W-9.
- E. Contractor's office has received and approved all items listed in the liability insurance section.
- F. Subcontractor has separately invoiced Contractor for each construction Project.
- G. Subcontractor has a current account with the Department of Labor & Industries and current on payments of the L & I premiums. Otherwise, Contractor may retain the estimated premiums on invoices. If Subcontractor is exempt from making such payments, Subcontractor shall provide Contractor with a letter of exemption from the Department of Labor & Industries.
- H. Contractor has received payment for the work from the Owner.

Contractor may deduct and withhold from any payment to the Subcontractor any sums due under this Master Agreement for one or more of the following reasons:

- a. Failure to perform its work;
- b. Loss or damage to persons or property caused by the Subcontractor to the Owner, Contractor or others to whom Contractor may be liable;
- c. Failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontractor's work;
- d. Rejected, nonconforming or defective work which has not been corrected in a timely fashion;
- e. Reasonable evidence of delay in performance of the work such that the work will not likely be completed within the Contractor schedule or has required additional management by Contractor.
- f. Reasonable evidence that the unpaid balance of the subcontract price may not be sufficient to offset the liquidated or actual damages that may be sustained by Contractor as a result of the anticipated delay caused by the Subcontractor;
- g. Reasonable evidence that the unpaid balance of the Subcontract price may be insufficient to cover the cost to complete the Subcontractor's work (this includes punch list work at the end of the project) should the Subcontractor be unable to do so;
- h. Third party claims involving the Subcontractor, unless and until the Subcontractor furnishes Contractor with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

Progress payment for work does not constitute Contractor's acceptance of the work, but is rather to be considered as an advance of funds, subject to final review and acceptance by Contractor.



**10. LIENS:** Subcontractor agrees not to record a labor and material man's lien against the property upon which Subcontractor has performed work, until Subcontractor has provided a minimum of thirty (30) days written notice to Contractor in order to allow Contractor a thirty-day period within which to resolve the dispute with Subcontractor. Subcontractor shall not file a lien or shall immediately release a lien in the event that Contractor deposits a sum of money equal to the amount of the lien with the Subcontractor's attorney, or in a joint interest-bearing savings account with the Subcontractor, with the understanding that said funds shall be paid only upon mutual agreement of the parties or as per dispute remedy procedure as described in section 19.

Any labor and material man's lien filed by Subcontractor which is later determined to be 25% or more in excess of the net amount ultimately found due and owing to the Subcontractor shall result in Contractor's right to collect from the Subcontractor all damages, consequential losses, or other expenses, incurred by Contractor as a result of contesting said lien, including home office administrative expenses and attorneys' fees.

Provided that Subcontractor has been paid for work completed under the Contract Documents (defined in Project Release), Contractor, as its sole option, shall have the right to require Subcontractor to provide lien releases or waivers by all person supplying labor, materials, or services to Subcontractor for the work performed by Subcontractor and to withhold any future and/or final payment until such releases are supplied.

**11. LIEN WAIVER:** The clearing of any check issued to Subcontractor constitutes a lien waiver and release of all claims through the date of the check for any job upon which the check is written. Additionally, the Subcontractor shall fill out and sign the lien waiver form provided by Contractor and attached to this Master Subcontract as Exhibit "B" for each invoice, for each Project.

**12. WORKER'S COMPENSATION:** Subcontractor warrants to Contractor that the Subcontractor has obtained worker's compensation (State Industrial Insurance) coverage for all employees of the Subcontractor. If the Subcontractor is a sole proprietor, the Subcontractor warrants that it has obtained workers compensation (State Industrial Insurance) coverage in accordance with the worker's compensation laws of the State of Washington. The Subcontractor is an Independent Contractor and NOT an employee of Contractor.

**13. WARRANTY:** If a defect in material and/or workmanship occurs, Contractor will notify Subcontractor promptly of such defect. Upon receipt of such notice, Subcontractor shall promptly and at its expense satisfactorily repair and/or replace the defective material and/or workmanship and/or systems. The Subcontractor, at its own expense, shall participate in any mediation and arbitration procedures established under any contracts between Contractor and Contractor's customer. The term of Subcontractor's warranty shall be for the same duration as the term of Contractor's warranty to Contractor's customer. Subcontractor shall provide all product warranties to Contractor at the completion of the Subcontractor's work and prior to receiving final payment from Contractor.

**14. INSURANCE:** The Subcontractor warrants to Contractor and will provide Contractor, prior to commencement of work, a Certificate of Insurance that includes commercial general liability

coverage, on an occurrence form, automotive liability, and employer's liability with the following minimum limits:

- \$1,000,000 Per Occurrence
- \$2,000,000 Annual Aggregate
- \$1,000,000 Products/Completed Operations
- \$2,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Automobile Liability with Symbols 1, 8, & 9
- \$1,000,000 Employers Liability any one disease/any one occurrence

Contractor will be endorsed as a primary additional named insured on all policies. The insurance carrier for the Subcontractor must have an A.M Best Rating of A- or better and the rating must be listed in the Certificate of Insurance.

Subcontractor shall provide a list of exclusions contained within their policy. Under the General Liability policy, the Subcontractor shall add Clark Construction Inc. to its officers, directors, and employees and the Owner (if required by contract) as additional insured using form CG 20 10 11 85. The policy shall be endorsed to stipulate that the insurance afforded to Contractor, its officers, directors, and employees and the Owner as additional insured shall apply as primary insurance. Any other insurance carried by the Contractor or the Owner will be excess only and will not contribute with Subcontractor's insurance. The General Liability policy shall be endorsed using form CG 24 04 10 93 or equivalent to waive rights of recovery.

No insurance will be altered, limits reduced, or cancelled without thirty (30) days prior written notice to Contractor. Subcontractor may be asked to provide a five-year loss run report on open, closed, pending or potential reserves or litigation. Subcontractor will be in breach of contract for failure to timely supply and maintain proper insurance as warranted under this Master Agreement and evidenced by the Certificate of Insurance provided.

Annually, Subcontractor shall supply Contractor with a new and replacement Certificate of Insurance. Not less than two weeks prior to the expiration, cancellation, or termination, the Subcontractor will provide Contractor with a new additional insured endorsement naming Contractor as a primary additional named insured.

The required insurances shall be subject to approval of Contractor but any acceptance of insurance certificated by the Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities assumed by Subcontractor in this Master Agreement. No work shall be performed at the project site until the Certificate of Insurance have been furnished by the Subcontractor and approved by the Contractor.

Payment may be withheld, at the option of the Contractor, until the Certificate of Insurance have been furnished or if upon receipt of a cancellation notice on a policy, until withdrawal of the notice or reinstatement of the canceled policy. Subcontractor shall ensure that all tiers of their subcontractors shall maintain insurance in like form and amounts, including the additional insured requirements set forth above, and they will provide evidence of sub-subcontractor's insurance prior to starting work.

Failure of Contractor to enforce in a timely manner any of the provisions of these insurance



requirement shall not act as a waiver to enforcement of any of these provisions later in the performance of this Master Agreement. Any exceptions to these insurance requirements must be delineated in the contract documents.

In the event Subcontractor does not comply with the requirements of this section, Contractor at its option, may provide insurance coverage to protect its interests and charge the Subcontractor for the cost of that insurance, together with a \$200 administration fee.

**15. WAIVER OF SUBROGATION:** The Subcontractor agrees to waive any and all tort or other subrogation rights for property damage or bodily injury against Contractor arising directly or indirectly out of, relating to, or in connection with the performance of Subcontractor's services.

**16. DEFAULT:** If Subcontractor refuses or fails to supply sufficient and properly skilled workers or materials to maintain the schedule of work; refuses or fails to make prompt payment to the sub-subcontractors or suppliers of labor, materials, or services; fails to correct, replace or re-execute faulty or defective work done or materials furnished; disregards the law, ordinances, rules, regulations or orders of any public authority having jurisdiction; or files for bankruptcy or material breach of this Master Agreement, and fails to correct the default and maintain the corrected condition within and no less than two (2) working days of receipt of written notice of the default, then Contractor, without prejudice to any rights or remedies otherwise available to it, shall have the right to any or all of the following remedies:

A. Supply such workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of Subcontractor's work or any part thereof, in which Subcontractor has failed to complete or perform after the above notice and to charge the cost thereof to Subcontractor who shall be liable for the payment of the same including reasonable overhead and profit;

B. Contract with one or more alternative subcontractors to perform such part of the Subcontractor's work as Contractor shall determine are necessary to complete the Project on schedule and charge the applicable cost thereof to the Subcontractor;

C. Terminate this Master Agreement and/or the Subcontractor from the Project, after 48 hours written Notice of Default, provided for above, to Subcontractor, and remove Subcontractor from the Project, take possession of the work site and finish the work by whatever reasonable method that Contractor deems expedient and commercially practicable. When Contractor terminates Subcontractor, Subcontractor shall not be entitled to receive further payment until the work is finished. If the unpaid balance of the Subcontractor exceeds the cost of finishing, including additional compensation to Contractor for services and expenses made necessary thereby, including overhead and additional administrative cost, such excess shall be paid to Subcontractor. On the other hand, if such costs exceed the unpaid balance, Subcontractor shall pay the difference to Contractor. Contractor may back charge Subcontractor for all costs incurred in completing Subcontractor's work including Contractor's staff time, job delay expenses or costs, additional interest expense, closing delay procedures, etc. A back charge may be applied against another subcontract between Contractor and Subcontractor for any other Project or job that Subcontractor may be engaged with Contractor.

D. Should Subcontractor breach any of its obligations in this Master Agreement, Contractor shall be entitled to recover against Subcontractor any reasonable and necessary attorneys' fees and paraprofessional fees, costs and expenses incurred by Contractor in pursuing claims against Subcontractor.

**17. CHANGE ORDERS:** Contractor may order additional work. Subcontractor shall perform such changes in the work as directed in writing. Any change or adjustment to the price shall be as specifically stated in a written and signed change order. If the Subcontractor encounters conditions it considers different from those described in the project documents or plans, the Subcontractor shall issue notice and have a change order signed by Contractor prior to proceeding with the change order work. Subcontractor must provide notification to Contractor in a timely manner so as not to impact the Project schedule. Subcontractor's schedule shall be equally adjusted if such schedule adjustment is agreed to by Contractor. If Subcontractor and Contractor do not agree in advance and in a mutually signed writing on a price for changes in the work, Subcontractor and Contractor may elect, on a case by case basis and in writing, to allow Subcontractor to proceed with the change order work, and Subcontractor will be paid based on the actual cost to Subcontractor plus a 15% markup for profit and overhead expenses.

Subcontractor may not negotiate directly with the Owner at any time. In the event Subcontractor carries on independent discussions with the Owner, which in the opinion of Contractor are detrimental to the progress of the job, Contractor reserves the right not to process change orders so generated and will back charge for any extra work caused by such discussions.

**18. TITLE TO MATERIALS:** Subcontractor shall bear the risk and be responsible for the replacement and/or reconstruction of all materials and work damaged or lost by fire, theft and/or vandalism until Contractor has accepted the Subcontractor's completed performance of all work.

**19. DISPUTES AND REMEDIES:** Any dispute that arises under this agreement shall be resolved according to this Section 19. Either party may initiate the dispute by delivering a written notice of dispute to the other party. Within seven (7) days after delivery of the notice of dispute, the parties or their designated representatives, shall meet in person to attempt to resolve the dispute.

If the parties cannot resolve the dispute within seven (7) days after the date of the meeting described above, then the parties shall settle the dispute by arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Master Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Master Agreement, and filed with the person or entity administering the arbitration. The place of arbitration shall be Kitsap County, Washington, and Washington State law shall apply. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Subcontractor shall continue to perform the work and adhere to the schedule during all disputes with Contractor. No work shall be delayed or postponed pending resolution of any disputes in accordance with this Section 19.

In any such arbitration or other legal action, the substantially prevailing party shall be entitled to its reasonable costs and attorney's fees, paralegal fees, expert fees and consultant fees incurred and included or added to any award, including any such fees and costs incurred post-award, on any appeal and through collection efforts. This Master Agreement shall be governed by and construed in accordance with the substantive law applicable to contracts and executed and performed in the State of Washington.

**20. INDEMNIFICATION:** Subcontractor shall indemnify, defend, at Subcontractor's sole expense, and hold harmless Contractor, the Owners (if different from Contractor), affiliated companies of Contractor, their partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors, and assigns ("Indemnified Parties"), from and against any and all claims for bodily injury or death, damage to property, demands, damages, and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and consultants' fees and costs) ("Claims") which arise or are in any way connected with the work performed, materials furnished or services provided under this Master Agreement by Subcontractor or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of Subcontractor, its employees or agents, whether active or passive. Subcontractor shall not be obligated to indemnify and defend Contractor or Owner for Claims found to be due to the sole negligence of or willful misconduct of Indemnified Parties. To the extent that such bodily injury or property damage is caused by the concurrent negligence of (a) Indemnified Parties and (b) Subcontractor or Subcontractor's agents or employees, Subcontractor shall only be required to indemnify the Indemnified Parties to the extent of the negligence of Subcontractor and/or its agents or employees.

Subcontractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Master Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally adjudicated or barred by applicable laws.

Subcontractor specifically and expressly waives any immunity that may be granted it under Washington State Industrial Insurance Act, Title 51 RCW, and all other applicable Industrial Insurance/Worker's Compensation Acts or their equivalent in the applicable jurisdiction. Furthermore, the indemnification obligation under this Master Agreement shall not be limited in any way to the amount or type of damages, compensation, or benefits payable under Workers' Compensation Acts, Disability Benefits Acts, or other Employee Benefit Acts; provided Subcontractor's waiver of immunity by provisions of this paragraph extends only to claims against Contractor for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of Subcontractor, its agents or employees, and does not include or extend to any claims by Subcontractor's employees against Subcontractor. Contractor and Subcontractor hereby certify and agree that this section 20 has been freely and mutually negotiated.

**21. RIGHT TO AUDIT.** If Contractor is audited or required to disclose financial and related records for any reason, then Contractor and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to

this Master Agreement kept by or under the control of the Subcontractor, including, but not limited to those kept by the Subcontractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Subcontractor shall, at all times during the term of this Master Agreement and for a period of five (5) years after the completion of this Master Agreement, maintain such records, together with such supporting or underlying documents and materials. The Subcontractor shall at any time requested by Contractor, whether during or after completion of this Master Agreement, make such records available for inspection and audit (including copies and extracts of records as required) by Contractor. Such records shall be made available to Contractor during normal business hours at the Subcontractor's office or place of business and subject to a three (3) day written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for Subcontractor. Subcontractor shall ensure Contractor has these rights with Subcontractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Subcontractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the subcontractor's obligations to Contractor. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by Contractor unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Subcontractor to Contractor in excess of one percent (1%) of the total contract billings for the Project, the Subcontractor shall reimburse Contractor for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, Contractor may recoup the costs of the audit work from the Subcontractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Subcontractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Contractor's findings to Subcontractor.

**22. NOTICES:** Any notices required or permitted hereunder shall be in writing and delivered to the other party by email and one of the following: in person, by overnight courier, by fax or by United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the address set forth below or to such other address as either party may designate in writing and deliver as herein provided.

**23. ASSIGNMENT:** This Master Agreement shall not be assigned to any third party without the expressed written consent of Contractor. Contractor shall have the right, to be exercised in its sole and absolute discretion, to assign this Master Agreement to an affiliate or third party. In the event of death, dissolution, liquidation or any other incapacity (other than bankruptcy) of Subcontractor, Contractor may at its sole discretion affirm or terminate the obligations contained in this Master Agreement. In the event of affirmation, the estate, trustee or other entity terminating the affairs of the departed or dissolved party shall abide by all the terms, covenants and conditions of this Master

Agreement, including any and all rights and obligations occurring prior to such death, dissolution, liquidation or any other incapacity.

**24. INDEPENDENT CONTRACTOR STATUS:** Subcontractor acknowledges and agrees that nothing in this Master Agreement shall be construed as creating an employer/employee relationship, a partnership, an agency relationship, or a joint venture between the parties. Subcontractor understands and agrees that Subcontractor has no authority to enter into any contract, assume any obligation, or make any warranty or representation on behalf of Contractor.

THE UNDERSIGNED HEREBY CERTIFY THAT PARAGRAPH "INDEMNIFICATION" WAS MUTUALLY NEGOTIATED.

**IN WITNESS WHEREOF, Contractor and Subcontractor have here to set their hands and seal the day and year of written first below.**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Clark Construction Inc

Subcontractor

By: \_\_\_\_\_

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

# Exhibit A-“ Pay Application”

## APPLICATION AND CERTIFICATE FOR PAYMENT

## DOCUMENT SUMMARY SHEET

Page 1 of 2

### TO CONTRACTOR:

CCI / Clark Construction Inc.  
901 Hildebrand Lane NE  
Suite 200  
Bainbridge Island, Washington 98110

### PROJECT:

\*\*Sandbox Test Project  
#### Sandbox Test Address  
Bainbridge Island, Washington 98110

### APPLICATION NO: 1

INVOICE NO: 01

PERIOD: 05/01/22 - 05/31/22

PROJECT NO: 1234

CONTRACT DATE: 07/09/2019

CERTIFICATE DATE: 05/12/2022

SUBMITTED DATE: //

### FROM SUBCONTRACTOR:

Subcontracting Test Company  
6309 Carpinteria Avenue  
Carpinteria, California 93013

SUBCONTRACT DATE: 7/9/2019

SUBCONTRACT FOR: testjake

### SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Subcontract. Continuation Sheet is attached.

1. Original Contract Sum	\$0.00
2. Net change by change orders	\$0.00
3. Contract sum to date (line 1 ± 2)	\$0.00
4. Total completed and stored to date (Column G on detail sheet)	\$0.00
5. Retainage:	
a. 0.00% of completed work:	\$0.00
b. 0.00% of stored material:	\$0.00
Total retainage (Line 5a + 5b or total in column I of detail sheet)	\$0.00
6. Total earned less retainage (Line 4 less Line 5 Total)	\$0.00
7. Less previous certificates for payment (Line 6 from prior certificate)	\$0.00
8. Current payment due:	\$0.00
9. Tax applicable to this payment:	\$0.00
10. Current payment due including tax:	\$0.00
11. Balance to finish, including retainage (Line 3 less Line 6)	\$0.00

The undersigned certifies that to the best of the Subcontractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Subcontract documents, that all amounts have been paid by the Contractor for Work which previous Certificates for payment were issued and payments received from the Owner, and that current payments shown herein is now due.

SUBCONTRACTOR: Subcontracting Test Company

By: \_\_\_\_\_ Date: \_\_\_\_\_

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner:	\$0.00	\$0.00
Total approved this Month:	\$0.00	\$0.00
Totals:	\$0.00	\$0.00
Net change by change orders:	\$0.00	

Exhibit B-“Lien Waiver”



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COMMITMENT #:

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Project Info:

**Conditional**

The undersigned, upon receipt of this payment totaling \$ current invoice amount and other valuable consideration, SUBJECT TO THE RECEIPT AND CLEARING OF THE CHECK IN THAT AMOUNT, does hereby fully waive and release, and hold Owner and Clark Construction Inc. harmless from any and all claims, of any type, kind, or character, for labor, services, equipment, rented or supplied, and materials furnished, including any mechanic's or materialman's lien, equitable lien, stop notice, equitable adjustment, or bond claim (public or private), that the undersigned has or may ever have in any manner arising out of any work, labor, services, equipment, material or supplies furnished by or through the undersigned in connection with the Project or the Contract through the date of thru date of current period.

This release does not cover any retention retained before or after the release date noted above.

**Unconditional**

The undersigned has been paid all previous payments due, and has received a progress payment in the amount of \$ total all previous invoices, and does hereby waive and release and agree to indemnify and hold Owner and Clark Construction Inc. harmless from: any claim, cause of action or liability, including but not limited to costs, expenses, interest, and attorney fees arising from any claims hereafter made on account of any and all claims, of any kind or character, for labor, services, equipment, rented or supplied, and materials furnished, including any mechanic's or materialman's lien, equitable lien, stop notice, equitable adjustment, or bond claim (public or private) that the undersigned has or may ever have in any manner arising out of any work, labor, services, equipment, material or supplies furnished by or through the undersigned in connection with the project or the contract through the date of thru date of prior period.

This release does not cover any retention retained before or after the release date noted above.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_ Company \_\_\_\_\_



SAMPLE