



Dear Subcontractor:

Please complete and return the enclosed forms as soon as possible to ensure your ability to work on our job sites and receive prompt payment for your work.

1. Subcontractor Application
2. W-9 Form
3. Subcontractor Quality Awareness Form
4. Forino must have a certificate of insurance from your insurance company showing proof of General Liability and Workers' Compensation coverage.

Be sure to tell your agent that:

- Forino Co. must be listed as "Certificate Holder"
  - "Additional Insured" for General Liability
  - Waiver of Subrogation covering all policies (\*unless Forino Management allows you to be exempt)
5. Master Subcontract Agreement
  6. Safety Form
  7. SC License & Hardeeville License & Beaufort License (if applicable)

Once everything is complete, please send back to me. It is greatly appreciated!

Thank you for your cooperation!

Sincerely,

Rebecca Ziegler

Forino Co.

[rziegler@forino.com](mailto:rziegler@forino.com)

610-670-2200 x113



555 Mountain Home Road Sinking Spring, PA 19608  
T: 610-670-2200 | F: 610-670-2608 | [www.forino.com](http://www.forino.com)

FOLLOW US ON





**SOUTH CAROLINA SUBCONTRACTOR APPLICATION**

Business Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Telephone # (\_\_\_\_\_)\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_ Fax # (\_\_\_\_\_)\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_

Cell Phone # (\_\_\_\_\_)\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_ Email address: \_\_\_\_\_

Contact Name \_\_\_\_\_

Type (example - framer, plumber, electrician, etc.) \_\_\_\_\_

SC Builders License # (attach copy) \_\_\_\_\_

City of Hardeeville License # (attach copy) \_\_\_\_\_

Please complete, sign and return the attached Form W-9 with this application.

**\*\* In order to work on our job site, we must have a Certificate of Insurance from your insurance company showing proof of workers' compensation and liability insurance. *Forino Co., 555 Mountain Home Road, Sinking Spring, PA 19608* should be listed as "Certificate Holder" and as "Additional Insured" on the certificate. If your carrier has any questions on this procedure, have them contact our office.**

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

***NO PAYMENT WILL BE MADE ON ANY INVOICE UNTIL WE RECEIVE:***

- \_\_\_ ***THIS COMPLETED APPLICATION***
- \_\_\_ ***COMPLETED FORM W-9***
- \_\_\_ ***SIGNED SUBCONTRACTOR'S LIABILITY AGREEMENT***
- \_\_\_ ***SIGNED QUALITY AWARENESS FORM***
- \_\_\_ ***CERTIFICATE OF INSURANCE (AS STATED ABOVE \*\*)***
- \_\_\_ ***COPY OF SC BUSINESS LICENSE (IF APPLICABLE)***
- \_\_\_ ***COPY OF HARDEEVILLE BUSINESS LICENSE & Beaufort License (if applicable)***

***PLEASE RETAIN "SUBCONTRACTOR BILLING/PAYMENT PROCEDURES" SHEET FOR YOUR REFERENCE.***



# Request for Taxpayer Identification Number and Certification

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

Print or type See Specific Instructions on page 2.	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 <b>one</b> of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶	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) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

<b>Part I Taxpayer Identification Number (TIN)</b>																																																																							
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 <i>How to get a TIN</i> on page 3.  <b>Note.</b> 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.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center; font-size: 8px;">Social security number</td> </tr> <tr> <td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td> </tr> <tr> <td colspan="5" style="text-align: center;">-</td> <td colspan="5" style="text-align: center;">-</td> </tr> <tr> <td colspan="10" style="text-align: center; font-size: 8px;">or</td> </tr> <tr> <td colspan="10" style="text-align: center; font-size: 8px;">Employer identification number</td> </tr> <tr> <td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td><td style="width: 30px; height: 20px;"> </td> </tr> <tr> <td colspan="5" style="text-align: center;">-</td> <td colspan="5" style="text-align: center;">-</td> </tr> </table>	Social security number																				-					-					or										Employer identification number																				-					-				
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<b>Part II Certification</b>	
Under penalties of perjury, I certify that:	
1. 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 2. 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 3. I am a U.S. citizen or other U.S. person (defined below); and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.	
<b>Certification instructions.</b> 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.	

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.  
**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
  - Form 1099-C (canceled debt)
  - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*
- By signing the filled-out form, you:
1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
  2. Certify that you are not subject to backup withholding, or
  3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
  4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.



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## **SUBCONTRACTOR QUALITY AWARENESS FORM**

I, \_\_\_\_\_ (name as signed below), as a representative of \_\_\_\_\_ (company name) know and understand the quality that is expected when working in a Forino home, and agree to perform those duties that I/my company has been contracted for, with the quality and care that is expected. I will not go over or cover over sub-standard work - such as, painting over drywall spatters on a door, or installing flooring on loose or damaged OSB. If I notice sub-standard work when I go in to do my job, I will inform the Forino supervisor before starting my job, so that the appropriate resolution can be addressed immediately, instead of when the customer takes possession of the home.

By my signature below, I acknowledge, understand and agree to adhere to the standards set forth by Forino.

\_\_\_\_\_  
Subcontractor Signature



## MASTER SUBCONTRACT AGREEMENT

THIS Master Subcontract Agreement ("Subcontract"), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Forino Co., L.P. (hereinafter "Contractor"), with an office and principal place of business at 555 Mountain Home Road, Sinking Spring PA 19608 and \_\_\_\_\_ (hereinafter "Subcontractor") with an office and principal place of business at \_\_\_\_\_ (hereinafter collectively "Parties").

### WITNESSETH:

**WHEREAS**, Contractor contemplates that from time to time it will enter into prime construction contracts with various clients ("Owner") for the performance of certain construction services with respect to certain projects (each "Project"); and

**WHEREAS**, Contractor desires to enter into a master subcontract agreement with Subcontractor whereby Contractor at its discretion may from time to time contract with Subcontractor, and Subcontractor desires to perform said work at the prices and upon the terms and conditions hereinafter expressed;

**NOW, THEREFORE**, in consideration of the mutual agreements herein expressed, the Parties contract, covenant and agree as follows:

#### 1. Scope of the Subcontract

a. The Contractor and Subcontractor agree that this Subcontract is a non-exclusive master agreement and that the Subcontractor may perform construction or similar services for others and the Contractor may engage others to perform similar construction services during the term of this Agreement as defined herein. However, in no event shall Subcontractor perform any other services that would constitute a conflict of interest with its performance on behalf of the Contractor hereunder. At the sole discretion of the Contractor, and without any guarantee as to the number of Projects, if any, in which it may be involved hereunder, the Contractor may from time to time authorize the Subcontractor to perform certain construction services ("Work") for the Contractor pursuant to this Agreement but only upon the execution by Contractor and Subcontractor of a work order ("Work Order") in a form attached hereto as **Exhibit D**. This Subcontract does not require either the Contractor or Subcontractor to issue, accept or any particular Work Order; however, if fully executed, each Work Order shall be governed by the terms and conditions of the Subcontract, as it may be amended by mutual agreement, and whether or not the Work Order specifically refers to it.

b. Work Order means each document that is executed by Contractor and Subcontractor during the term of this Agreement, which contains the description of a specific Project with respect to which Services are to be performed, the precise scope of the Services to be performed, a detailed description of the Project site, and the details of compensation. Upon request by the Contractor to

the Subcontractor for a proposal to perform Services for a particular Project, the Subcontractor will promptly prepare and sign a proposed Work Order in the form substantially similar to **Exhibit D**. The proposed Work Order will constitute an offer by the Subcontractor and shall be forwarded to the Contractor for its review and acceptance. Only upon acceptance of the Work Order, as evidenced by the written endorsement of an authorized Contractor's representative, will the Subcontractor be authorized to proceed with performance of the Services as identified therein. Any Work Order, prepared and executed as required by this Agreement, shall be deemed incorporated into and made a part of this Subcontract, as of the date and time as executed by the Parties, and shall constitute a separate and individually enforceable undertaking governed by the terms of this Subcontract. Each Work Order shall specifically reference this Subcontract and shall incorporate by reference all the provisions of this Subcontract, except to the extent expressly and specifically modified by the terms of the individual Work Order.

c. The term (hereinafter "Term") of this Subcontract shall be (1) year(s) from the date of its execution unless terminated by the Contractor earlier in accordance with the Subcontract. At the Contractor's sole option, the Subcontract may be deemed renewed for an additional one (1) year period upon expiration of the aforementioned Term unless the Subcontractor notifies the Contractor in writing, no later than ninety (90) days prior to the scheduled expiration date, of its request that the Subcontract not be renewed.

d. The Contract Documents as referred to in this Subcontract shall refer to those drawings, plans and specifications and other documentation identified in each individual Work Order to be the Contract Documents for the particular Project that is the subject of said Work Order.

#### 2. Subcontractor's Work

a. Subcontractor shall perform all work and shall furnish all supervision, labor, materials, plant, hoisting, scaffolding, tools, equipment, supplies and all other things necessary for the construction and completion of the work described in each individual Work Order, including work incidental thereto and reasonably inferable therefrom, in strict accordance and full compliance with the terms of this Subcontract, and to the satisfaction of Contractor and Owner (hereinafter "Work").

b. With respect to the Work covered by this Subcontract, and any individual Work Order, and except as expressly modified herein, Subcontractor shall have all rights which Contractor has under the Contract Documents, and Subcontractor shall assume all obligations, risks and responsibilities which Contractor has assumed towards the Owner, and third parties as applicable, in the Contract Documents, and Subcontractor shall be bound to Contractor in the same manner and to the same extent that Contractor is bound to the Owner or said third parties. In case of a conflict between this Subcontract Agreement and the Contract Documents as incorporated herein, pursuant to each Work Order, the terms of the Work Order shall prevail. To the extent relevant to their respective scopes of work, Subcontractor shall ensure that each of its subcontractors and suppliers are bound to the terms of this Subcontract Agreement and the Contract Documents.

c. Subcontractor shall assume sole responsibility for and shall perform, or cause to be performed, all special inspections and testing required by any applicable building code, regulations, or the Contract Documents relative to the Subcontractor's Scope of Work for each Project. To the fullest extent permitted by law, Subcontractor shall be liable to Contractor for any and all liability, costs, expenses, fines, penalties, and attorney's fees resulting from its failure to perform such duties.

### 3. Payment

a. In order to process your bills for payment they must contain the following information: Development (see abbreviation list below), Lot #, Style of house, standard contract price for the house and any extra items you are billing, itemized. All invoices will be processed for payment 30 days from the invoice date, unless invoices are not received within a week from invoice date – then they will be processed for payment 30 days from receipt. If an invoice is submitted prior to completion of the work listed on the invoice, payment will be delayed for a minimum of 30 days from completion of said work.

#### Development Names & Abbreviations

**HSL (1) Hearthstone Lakes (SC)**

**(1) To work in Hearthstone Lakes, you must supply our office with copies of your City of Hardeeville and South Carolina Business licenses.**

b. Subcontractor accepts sole and exclusive liability for all taxes and contributions required of Subcontractor by federal, state or local laws or regulations, including, without limitation, the Federal Social Security Act and the Unemployment Compensation Law or similar laws in any state with respect to the employees of Subcontractor and the performance of the Work.

c. Contractor may withhold from any payment, including final payment, such amount as Contractor, in its discretion, deems reasonably necessary to protect itself against any actual or potential liability (including attorney's fees and costs) or damage directly or indirectly relating to the Subcontract arising from, or alleged to arise from, any act or omission by Subcontractor, regardless of whether or not the Owner has actually withheld payment from the Contractor.

### 4. Indemnification and Subcontractor's Liability

a. Subcontractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided under any Work Order issued pursuant to this Subcontract, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the entirety of the Work by Owner. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost, subject only to the extent that any net proceeds are payable under any builder's risk

property insurance that may be maintained by Owner or Contractor, if any.

b. Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of any failure of Subcontractor, or any of its suppliers or subcontractors of any tier, to perform.

c. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Contractor, Owner and their respective officers, directors, employees and agents ("Indemnified Parties") from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs reasonable attorneys' fees, consequential damages, and punitive damages), arising out of or resulting from, or alleged to arise out of or arise from, the performance of Subcontractor's Work under the Subcontract, and any Work Order whether such claim, damage, demand, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; **but only to the extent attributable to the negligence of the Subcontractor or any entity for which it is legally responsible or vicariously liable and; regardless whether the claim is presented by an employee of Subcontractor.** Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of the Subcontractor or the rights of the Contractor contained in this Subcontract or otherwise. This indemnification 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 any workers' compensation acts, disability benefits acts or other employee benefits acts. This indemnification shall be in addition to any indemnity liability imposed by the Contract Documents, and shall survive the completion of the Work or the termination of the Subcontract.

d. Subcontractor's assumption of liability is independent from, and not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to Article 4, or otherwise.

### 5. Subcontractor's Insurance

a. Prior to commencing the Work, Subcontractor shall procure, and thereafter maintain, at its own expense, until final acceptance of the Work or later as required by the terms of the Subcontract or any individual Work Order, insurance coverage required by the Contract Documents and this Subcontract. At a minimum, and subject to modification in individual Work Orders, the types of insurance and minimum policy limits specified in **Exhibit A** shall be maintained in a form and from insurers acceptable to Contractor. All insurers shall have at least an A- (excellent) rating by A.M. Best and be qualified to do business in the state where the Project is located.

### 6. Time of Performance

a. Subcontractor will commence Work when directed by Contractor and will proceed with the Work in a prompt and diligent manner in accordance with the Project Schedule, attached to the individual Work Order, as such Schedule may be amended from time to time by Contractor. **TIME IS OF THE ESSENCE.** Subcontractor shall

be entitled to additional compensation for compliance with Schedule amendments only to the extent, if any, that Contractor receives reimbursement from the Owner.

b. Subcontractor shall submit a detailed schedule for performance of the Work for each Project, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents and with Paragraph 6.a. above. Contractor may, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions in said schedule.

c. Subcontractor will coordinate its Work with the work of Contractor, other subcontractors, and Owner's other builders, if any, so no delays or interference will occur in the completion of any part or all of the Project.

## **7. Changes and Claims**

a. Contractor may, at any time, unilaterally or by agreement with Subcontractor, and without notice to the sureties, make changes in the Work. Any unilateral order, or agreement, under this Paragraph 6.a. shall be in writing, unless an emergency requires Subcontractor to proceed without a written order. Subcontractor shall immediately perform the Work as changed without delay.

b. Subcontractor shall submit in writing to Contractor, along with substantiating evidence deemed satisfactory by Contractor, any claims for adjustment in the Subcontract Price, Project Schedule or other provisions of the Work Order claimed by Subcontractor for changes directed by Owner, or for damages for which the Owner is liable, or as a result of deficiencies or discrepancies in the Contract Documents ("Owner Claims"), at least five (5) business days prior to the time specified in the Contract Documents, otherwise such claims are waived. Contractor shall process said Owner Claims according to the provisions of the Contract Documents so as to protect the interests of Subcontractor and others including Contractor. Subcontract adjustments shall be made only to the extent that Contractor receives relief from or must grant relief to Owner and then only based on Subcontractor's allocable share of such relief. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead, profit and other interest in any recovery, by making a reasonable apportionment, if applicable, among Subcontractor, Contractor and other subcontractors or persons with interests in the adjustment. In no event shall the Contractor become or be liable to the Subcontractor on account of any such Owner Claims in excess of the amount actually received by Contractor from Owner on account of such claim. It is expressly acknowledged that receipt of payment by Contractor from Owner on account of any such Subcontractor's Owner Claims is an express condition precedent to any obligation of Contractor to pay such claims. This paragraph will also cover other equitable adjustments or other relief allowed by the Contract Documents.

c. For changes ordered by Contractor independent of Owner or the Contract Documents, Subcontractor shall be entitled to an equitable adjustment of the Subcontract Price or Project Schedule, or

both, to the extent that impact can be substantiated to the Contractor's satisfaction based on the unit rates set forth on **Exhibit C**.

d. Pending resolution of any claim, dispute or other controversy, nothing shall excuse Subcontractor from proceeding with prosecution of the Work.

## **8. Failures to Perform**

a. If, in the opinion of Contractor, Subcontractor shall at any time (1) refuse or fail to provide sufficient properly skilled workmen or materials of the proper quality, (2) fail in any respect to prosecute the Work according to the Project Schedule, (3) stop, delay, or interfere with the work of Contractor or any other builder or subcontractor, (4) fail to comply with all provisions of this Subcontract, an individual Work Order or the Contract Documents as incorporated therein, (5) be adjudged a bankrupt, or make a general assignment for the benefit of its creditors, (6) have a receiver appointed, or (7) become insolvent or a debtor in reorganization proceedings, then, after serving three (3) days written notice, unless the condition specified in such notice shall have been eliminated with such three (3) days, the Contractor may at its option (i) without voiding the other provisions of the Subcontract and without notice to the sureties, take such steps as are necessary to overcome the condition, in which case the Subcontractor shall be liable to Contractor for the cost thereof; (ii) terminate for default the Subcontractor's right to proceed under the Subcontract or the Work Order, or both, or (iii) seek specific performance of Subcontractor's obligations, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor and/or Owner.

b. In the event of termination for default, Contractor may, at its option, (1) enter on the premises and take possession, for the purpose of completing the Work, of all materials and equipment of Subcontractor, (2) require Subcontractor to assign to Contractor any or all of its subcontracts or purchase orders involving the Project or other Projects in the event of a termination of the Subcontract or (3) complete the Work either by itself, or through others, by whatever method Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until all Work shall be fully completed and accepted by Owner.

c. If the Owner terminates any portion of the prime agreement with Contractor which includes the Work which is the subject of an individual Work Order, then the Subcontract shall be similarly terminated and Subcontractor shall be entitled to such relief as may be granted to Contractor on Subcontractor's behalf consistent with Articles 1, 7 and 8 of the Subcontract.

d. In the event of termination for default or any other reason, the provisions of this Subcontract concerning the subcontractor's liability, indemnity and insurance obligations shall remain in full force and effect in conformance with and for the period(s) specified in those provisions.

## **9. Settlement of Disputes**

a. In case of any dispute between Contractor and Subcontractor, due to any Owner Claims, any act or omission of Owner

or any entity for which the Owner is responsible, or involving the Contract Documents, Subcontractor agrees, to the same extent that Contractor is bound to Owner, to be bound by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made thereunder by the party, board or court so authorized in the Contract Documents or by law, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor will comply with all provisions of the Contract Documents allowing a reasonable time for Contractor to analyze and forward to Owner any required communications or documentation. Contractor will, at its sole option (1) present to Owner, in Contractor's name, or (2) authorize Subcontractor to present to Owner, in Contractor's name, all of Subcontractor's claims and answer Owner's claims involving Subcontractor's Work, whenever Contractor is permitted to do so by the terms of the Contract Documents. If such dispute is prosecuted or defended by Contractor, Subcontractor agrees to furnish all documents, statements, witnesses, and other information required, and to pay for all costs, including attorneys' fees, incurred in connection therewith. The Subcontract Price shall be adjusted by Subcontractor's allocable share determined in accordance with Article 7 hereof.

b. With respect to any controversy between Contractor and Subcontractor not involving the Owner, the Contract Documents or an Owner Claim, Contractor shall issue a decision which shall be final and binding unless, within five (5) days of receipt, the Subcontractor files a notification in writing of its intent to litigate the controversy in accordance with Paragraph 9.d. Notification of any such claim under this Paragraph 9.b. must be submitted in writing within ten (10) days of Subcontractor's awareness of the facts underlying the claim. Failure of Subcontractor to submit timely its notice of claim or notice of intent to litigate shall constitute an absolute bar and complete waiver of Subcontractor's right to recover on account of such claim.

c. Subject to Subcontractor's compliance with such notice requirements, either party may request non-binding mediation of non-Owner Claims with a mediator to be agreed upon by the parties, and shall pursue resolution of their dispute in good faith through such mediation. If the Parties cannot agree upon a mediator, they shall submit the dispute to the American Arbitration Association for non-binding mediation pursuant to its rules. Any such mediation shall take place in the place where the Project is located. Any mediation costs shall be equally borne by the parties.

d. Anything to the contrary in the Contract Documents notwithstanding, any controversy between Contractor and Subcontractor not involving Owner, the Contract Documents, or an Owner Claim and which is not amicably resolved by the Parties will be submitted to either \_\_\_\_\_ County (1) a court of competent jurisdiction in the State of \_\_\_\_\_; or, (2) \_\_\_\_\_ arbitration pursuant to the Construction Industry Rules of the American Arbitration Association to be conducted at the place where the Project is located. The prevailing party in any litigation/ arbitration shall be entitled to recover reasonable attorney's fees, costs and expenses incurred in connection with the litigation.

## 10. Termination for Convenience

Contractor shall have the right to terminate this Subcontract, or any Work Order issued hereunder, in whole or part, for its own convenience and regardless whether there is a termination of Contractor's contract with Owner, by providing Subcontractor with a written notice of termination, to be effective upon receipt by Subcontractor. If the Subcontract or any Work Order is terminated for convenience, the Subcontractor shall be paid the amount representing costs which are due from the Owner for its Work, as provided in the Contract Documents, after payment therefore by the Owner to Contractor. The Subcontractor's remedy under this Article 13 shall be exclusive and in no event will Subcontractor be entitled to recovery of any anticipatory profits or damages.

## 11. Assignment

a. Subcontractor shall not subcontract any portion of the Work or the Subcontract and shall not assign or transfer this Subcontract, or any Work Order or funds due thereunder, without the prior, written consent of Contractor and Subcontractor's surety.

b. Contractor may assign the Subcontract or any Work Order without prejudice to its rights under the Subcontract, Work Order, or any surety bond issued with respect thereto.

## 12. Safety

The Contractor makes no representation with respect to the physical conditions or safety of the Project Site. The Subcontractor shall, at its own expense, preserve and protect from injury its employees engaged in the performance of the Work and all property and persons which may be affected by its operations in performing the Work. The prevention of accidents to workers engaged in the Work and others affected by the Work is the responsibility of the Subcontractor and Subcontractor shall comply with all federal, state, labor and local laws, regulations and codes concerning safety as shall be applicable to the Work and to the safety standards established by Contractor during the progress of the Work. Subcontractor shall indemnify, defend and hold harmless Contractor, Owner and their respective officers, directors, agents and employees from any costs, expenses or liability (including attorneys' fees, fines or penalties) arising out of the Subcontractor's failure to comply with the aforesaid laws, regulations and codes.

## 13. Bonds

Within ten (10) days of execution of any individual Work Order, the Subcontractor shall \_\_\_ or shall not \_\_\_ furnish at Subcontractor's expense a Performance and Payment Bond each in the full amount of the Work which is the subject of the Work Order and in accordance with the forms attached as **Exhibit B** and in accordance with the rates set forth on **Exhibit C**. The bond form and the surety shall be acceptable to the Contractor. Failure to deliver such bonds is a material breach of this Subcontract.



**14. Clean-Up**

Subcontractor shall clean up the areas used by Subcontractor for its Work on a daily basis and remove from each Project site, or to a specified location on the Project site as directed by Contractor, and in a manner that will not impede either the progress of the Project or of other trades, all rubbish, waste material, excess material and debris resulting from the Work.

**15. Governing Law**

This Subcontract shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to conflict of law principles.

**IN WITNESS WHEREOF**, the Parties, by their duly authorized representatives, have hereunto executed this Subcontract, on the day and year first above written.

**Exhibits:**

- A - Insurance Provisions
- B - Bonds
- C - Schedule of Unit Rates
- D - Work Order
- E - Safety Attire for Job Sites

**SUBCONTRACTOR:**

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

Name:

Title:

Date:

WITNESS: \_\_\_\_\_

Release: 7/2015

**16. Presumption Arising From Authorship**

Both Parties have had the opportunity to review this Subcontract with counsel and negotiate before signing this Subcontract. Therefore, there will be no presumption for or against either of the Parties arising out of the drafting of the Subcontract.

**CONTRACTOR:**

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

Name:

Title:

Date:

WITNESS: \_\_\_\_\_

**Exhibit A: Insurance Provisions**  
**SUBCONTRACTOR'S INSURANCE**

Before commencing the Work on any individual Project, and as a condition precedent to any payment, the Subcontractor shall purchase and maintain insurance in conformance with the provisions contained in this **Exhibit A**. This insurance will provide a defense and indemnify the Contractor, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Subcontractor's acts or omissions or the acts or omissions of those acting on the Subcontractor's behalf.

Proof of this insurance shall be provided to the Contractor before the Work commences, as set forth below. To the extent that the Subcontractor subcontracts with any other entity or individual to perform all or part of the Subcontractor's Work, the Subcontractor shall require the other Sub-Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Sub-Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the Work, be deemed a waiver by the Contractor of Subcontractor's or the Sub-Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Contractor, or if any insurance policies fail to meet any of the specified requirements, the Subcontractor or the Sub-Subcontractor will, upon demand by the Contractor, defend and indemnify the Contractor for any resulting loss, claim or expense, at the Subcontractor's or Sub-Subcontractor's expense.

**MINIMUM LIMITS OF LIABILITY**

The Subcontractor must maintain the required insurance with a carrier rated A- or better by A. M. Best. The Subcontractor shall maintain at least the limits of liability as set forth below:

**Commercial General Liability Insurance**

\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)

\$2,000,000 General Aggregate per Project

\$2,000,000 Products & Completed Operations Aggregate

\$1,000,000 Personal and Advertising Injury Limit

**Business or Commercial Automobile Liability Insurance**

\$1,000,000 combined single limit per accident

**Workers' Compensation and Employers' Liability Insurance**

Workers' Compensation – Coverage to meet the statutory requirements of any state/commonwealth in which the Subcontractor, its employees or the employees of any Sub-Subcontractors are performing work for the Contractor.

**Employer's Liability:**

\$100,000 Each Accident

\$100,000 Each Employee for Injury by Disease

\$500,000 Aggregate for Injury by Disease

**Excess or Umbrella Liability (to overlay Employer's Liability, Automobile Liability and Commercial Liability coverage**

\$1,000,000 Occurrence

\$1,000,000 Aggregate

**Additional Insured Status and Certificate of Insurance**

The Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy, which must be primary and noncontributory with respect to the additional insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision.

It is expressly understood by the parties to this Subcontract that it is the intent of the Parties that any insurance obtained by the Contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Subcontractor, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Commercial, Automobile and Workers Compensation policies in favor of Contractor and Owner, and this clause shall also apply to the Contractor's and Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of Work on any individual Project, Subcontractor shall submit a Certificate of Insurance in favor of Contractor and showing proof of the required insurance coverage and Additional Insured Endorsements. The Certificate of insurance shall also specifically identify all States which are listed under Section 3.A. Worker's Compensation Insurance.

30 days prior written notice of the cancellation, material modification or non renewal of any policy shall be provided to the Contractor and Owner. Copies of insurance policies shall promptly be made available to the Contractor upon request.

**NO LIMITATION ON LIABILITY**

With regard to any and all claims against the additional insured by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**CANCELLATION, RENEWAL AND MODIFICATION**

The Subcontractor shall maintain in effect all insurance coverages required under this Subcontract at the Subcontractor's sole expense, underwritten by insurance companies acceptable to the Contractor, until final completion and acceptance of the entirety of the Subcontract Work; or longer if so provided in the Work Order such as with respect to completed operations coverage. Certificates of insurance showing required coverage to be in force must be delivered to the Contractor prior to commencement of the Subcontract Work for an individual Project. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Subcontract, this shall be considered a material breach of the Subcontract, entitling the Contractor, at its sole discretion, to purchase such equivalent coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or, in the alternative, exercise all remedies otherwise provided in the Subcontract, the Work Order, or as permitted by law or equity.

**CONTINUATION OF COVERAGE**

The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor on any individual Project, whichever is later. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

**ACKNOWLEDGMENT OF REFERRAL OF THIS PROVISION TO THE SUBCONTRACTOR'S INSURANCE AGENT OR BROKER**

The Subcontractor represents that it has provided a copy of the "Insurance Provisions" to his insurance agent and/or broker, and that the Subcontractor has instructed the agent/broker to provide insurance in full compliance with the terms and conditions herein.

The Contractor and Subcontractor hereby acknowledge that this **Exhibit A** is considered a material term of the Subcontract.

On Behalf of the Contractor

On Behalf of the Subcontractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Date:

Date:

## **Exhibit B: Bonds**

**Exhibit C: Schedule of Unit Rates**

The following unit rates shall be used for the pricing of any non-Owner claims and changes:

<u>DESCRIPTION</u>	<u>RATE</u>

The aforementioned rates are fully burdened and inclusive of all profit, overhead, fringe benefits, taxes, etc. Such rates shall remain valid for the term of the Subcontract.

**Exhibit D: Work Order Form No.**

Date:

Project:

Owner:

Dear

          ("Contractor") would like           ("Subcontractor") to perform certain construction services for the above identified Project in accordance with the scope of work as set forth below ("Work"). This Work Order is being issued in accordance with that certain Master Subcontract Agreement dated as           entered into between Contractor and Subcontractor ("Master Agreement").

The Work must be completed in accordance with the following Project Schedule:

**Compensation:**

The Contractor shall pay the Subcontractor, subject to the terms of this Work Order, the liquidated sum of           Dollars (\$           ) inclusive of any and all Reimbursable Expenses:

**Scope of Work:**

The following Work is required to be performed pursuant to this Work Order:

**Contract Documents:**

The Contract Documents include the following:

**CONTRACTOR:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SUBCONTRACTOR:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit E: Safety Attire for Job Sites

Please be advised that it is mandatory to follow the entire Contractor Safety, OSHA and MSHA Regulations while performing services on a Forino jobsite. This includes our developments and our contracted client services. We are requesting strict adherence to our dress code which includes:

- Work Boots
- Long Pants
- Sleeved Shirts
- Hard Hats (\*)
- Safety Vests (\*)
- Safety Eye Wear (\*)

\* These items are to be used on an as needed basis per the work being performed or as directed by employees of Forino Co., L.P. if they are to worn on the project. Forino Standard Practice will require all to have these items on hand in case of need for the project.

**Failure to comply will result in the removal of your personnel from the project.**

By my signature below, I acknowledge, understand and agree to adhere to the standards set forth by Forino.

\_\_\_\_\_  
Subcontractor Signature

\_\_\_\_\_  
Date



## ***SUBCONTRACTOR BILLING / PAYMENT PROCEDURES***

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In order to process your bills for payment they must contain the following information:

1. **Development** (see abbreviation list below) **& Lot #** (example – SFE 214)  
OR 5-digit **Sub Job #** (verify with Forino Supervisor)
2. Style of house (N/A if Sub Job)
3. Standard contract price for the house
4. Any extra items you are billing, itemized

All invoices will be processed for payment 30 days from the invoice date, unless they are not received within a week from invoice date – then they will be processed for payment 30 days from receipt. If an invoice is submitted prior to completion of the work listed on the invoice, payment will be delayed for a minimum of 30 days from completion of said work.

If you have any questions on these procedures, please contact our office.

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### Development Names & Abbreviations

HSL \*      Hearthstone Lakes (SC)

*\* To work in Hearthstone Lakes, you must supply our office with copies of your City of Hardeeville & State of South Carolina Business licenses.*

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**Please email all invoices to  
[ACCOUNTSPAYABLE@FORINO.COM](mailto:ACCOUNTSPAYABLE@FORINO.COM)**

***PLEASE KEEP THIS FORM FOR YOUR REFERENCE***