

FERRIS STATE UNIVERSITY

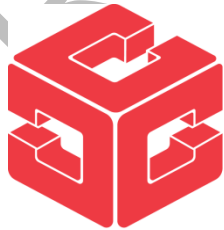
Contract Project Management Services

Clark Construction Company Project Number 14-2667

Invitation for Trade Contractor Prequalification

Ferris State Bid #14-069

April 14th, 2014



CLARK
Construction Company
Professional Construction Services

Clark Construction Company
3535 Moores River Drive
Lansing, MI 48901

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4/14/2014

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ADVERTISEMENT FOR TRADE CONTRACTOR PREQUALIFICATION

PROJECT: FERRIS STATE UNIVERSITY
CONTRACT PROJECT MANAGEMENT SERVICES

FSU BID NO.: 14-069

CLARK PROJECT NO.: 14-2667

TRADE CONTRACTOR PREQUALIFICATION

DESCRIPTION: FSU Contract Project Management Services;
Clark Construction Company (CCC) has been engaged by
Ferris State University (FSU) to complete pre-construction,
design and construction phase services for multiple projects
at numerous locations throughout FSU's main campus in
Big Rapids, MI.
These projects will all be Prevailing Wage Projects.

OWNER: Ferris State University

ARCHITECT/ENGINEER Multiple A/E Firms (assigned per project)

CONSTRUCTION MANAGER: Clark Construction Company
Lansing, MI 48911

PROJECT MANAGER: Chris Bradburn
734-686-3025
cbradburn@clarkcc.com

1. CONTRACTOR QUALIFICATION DUE DATE/LOCATION

1.1.1 The Online Contractor Qualifications are due on April 28th 2014 by 2:00PM. These must be submitted online at Clark Construction Company's website, per section 3.1 of this document.

1.2 The **PREQUALIFICATION AGREEMENT FORM** (Section 004126) and **INFORMATION AND DISCLOSURE FORM** (Section 004127) must be submitted by 2:00 pm on April 28th, 2014. Forms may be shipped or hand delivered. Email or facsimile submissions are not permitted. The forms must be submitted to the FSU Purchasing Department Office, located at:

FSU Purchasing Department
Re: Bid #14-069
250 Prakken Building
420 Oak Street
Big Rapids, MI 49307-2020

SECTION 001101
ADVERTISEMENT FOR TRADE CONTRACTOR PREQUALIFICATION

2. CONTRACTOR QUALIFICATION CATEGORIES

We are seeking prequalifications for the following scopes of work:

- | | |
|--------------------------------|-------------------------------------|
| A. Concrete | K. Hard Tile |
| B. Masonry | L. Painting |
| C. Carpentry | M. Metal Studs, Drywall, Acoustical |
| D. General Trades | N. Glass/Glazing |
| E. Mechanical | O. Furniture |
| F. Plumbing | P. Casework |
| G. Electrical | Q. Laboratory Casework |
| H. Technology/Data/It | R. Audio Visual |
| I. Elevators | |
| J. Flooring (Carpet/Resilient) | |

3. CONTRACTOR QUALIFICATION DOCUMENT AVAILABILITY

- 3.1 Online prequalification submission will be submitted via the Clark Construction Company website. A sample qualification form is included for reference only. The online submission must be completed in one sitting - there is no option to save your progress part-way through and return at a later time.
http://prequalification.clarkcc.com/users/sign_up
- 3.2 Prequalification Agreement Form is located in Section 004126 (attached). This form must be delivered and received by the FSU Purchasing office by the date and time listed in section 1.2.
- 3.3 Information and Disclosure Form is located in Section 004127 (attached). This form must be delivered and received by the FSU Purchasing office by the date and time listed in section 1.2.

4. CONTRACTOR QUALIFICATION REQUIREMENTS

- 4.1 Questions related to this prequalification process are welcome and must be submitted, in email form, to the Project Manager, Chris Bradburn (cbradburn@clarkcc.com). Phone conversations are welcome, but email follow-up must be complete to be considered official communication. Faxed questions will not be entertained.

5. PROPOSAL SCHEDULE

- 5.1 We are anticipating multiple proposals to be released over the next 12 months with the possibility of further extension.

SECTION 001101
ADVERTISEMENT FOR TRADE CONTRACTOR PREQUALIFICATION

6. ADDITIONAL INFORMATION AND BACKGROUND

- 6.1 FSU has compiled a large list of individual projects across the campus in multiple buildings. The projects vary in scope and budget, from simple cosmetic upgrades to extensive renovations in some cases. Bid proposals will be solicited on a project by project basis. It is estimated that a number of projects will be out for bid starting in May of 2014 and continue through the fall of 2014. This end date may be extended as FSU sees fit.
- 6.2 CCC will be directly contracting with a number of A/E firms for the projects.
- 6.3 CCC's intent is to solicit prequalification statements from vendors that would be interested in submitting actual bids as the projects are released in the near future. The bidding of each individual project will be closed and only available to select, prequalified firms as part of this process. As a condition of being included on future bid opportunities, CCC will require that each prequalified firm submit bid proposals for each and every project going forward, as appropriate pending development of the work scopes. We are looking to create a pool of willing partner firms that will offer good-faith bid proposals for all projects henceforth.
- 6.4 All projects being pursued will be subject to Prevailing Wage Requirements. Prevailing Wage determinations will be included in each individual bid release, but all prospective firms must be able to comply with all applicable rules and regulations as required.
- 6.5 Trade Contractors recognize the right of the Owner or Construction Manager to reject a prequalification submission for any reason including but not limited to the following:
- a. Trade Contractor fails to furnish or submit data required in the prequalification Documents;
 - b. Prequalification form(s), Information and Disclosure Form, and/or Prequalification Agreement Form are in any way incomplete or irregular;
 - c. Firm's performance as a Trade Contractor was unsatisfactory under a prior contract for the construction, repair, modification, or demolition of a facility with the Owner, Construction Manager or Architect;
 - d. Known poor performance on prior contracts with parties other than the Construction Manager, Owner or Architect; or
 - e. Unsatisfactory financial condition.

END OF SECTION

**CLARK CONSTRUCTION COMPANY
TRADE CONTRACTOR QUALIFICATION FORM**

PROJECT NAME: _____ **DATE** _____

GENERAL

Legal name of Business: _____

Principal Address: _____

Street

P. O. Box _____ City _____ State _____ Zip _____

Contact Person: _____ Federal ID No.: _____

Telephone No.: _____ Fax No.: _____

____ Corporation ____ Partnership ____ Individual ____ Sole Proprietorship ____ Joint Venture ____ Other

If Incorporated, State of Incorporation: _____ Year Incorporated _____

Average number of office employees: _____ Field: _____

Is your company qualified as (Enclose certificate) **MBE** _____ **WBE** _____ **DBE** _____
SMALL BUSINESS _____ **HUB ZONE** _____ **8A** _____
SDB _____ **WOSB** _____ **VOSB** _____
SDVOSB _____ **HBCU/MI** _____

Does your company have a written EEO policy? Yes ____ No ____

Does your company have a current Certificate of Awardability? Yes ____ No ____

List company officers:

Name	Title	Years with Organization

State the type(s) of work in which you specialize and regularly perform with your own personnel:

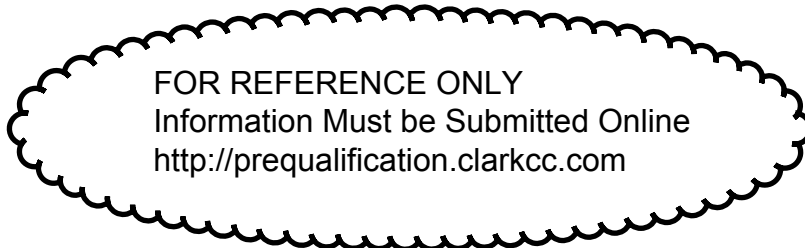
Labor Relations: Union _____ Open Shop _____

FINANCIAL

Please submit current interim financial statement and last certified financial statement, including work in progress and contract schedule. This information will be kept strictly confidential.

Bank Reference: _____ (Bank Name) _____ (Telephone)

Contact Person: _____ (Contact Name)



CLARK CONSTRUCTION COMPANY
TRADE CONTRACTOR QUALIFICATION FORM

Amount of Line of Credit: _____ Secured? Yes ___ No ___ Amount available _____

**** Provide detailed schedule of values with breakdown per specification Section 012973****

Is your company currently in default on any loan agreement or financial agreement with any bank, financial institution or other entity? (If yes, attach details, circumstances and prospects for resolution) YES ___ No ___

BONDING INFORMATION

Furnish a signed statement from the surety certifying the following: If bonded – statement not required

Current Bonding Capacity of Company: Aggregate _____ Single Project _____

Amount of Work Currently Bonded _____ Bond Rate _____

Name of Bonding Company _____ Co. Rating _____

Name of Bonding Agent: _____
(Telephone) _____

Length of Time with Bonding Company _____

Have Performance or Payment Bond claims ever been made to a surety? Yes ___ No ___

Has any surety company refused to bond the firm or any affiliate companies on any project? Yes ___ No ___

Current capacity exists to cover the amount of this contract? Yes ___ No ___

INSURANCE

Furnish a Certificate from your insurance carrier verifying all limits & project requirements to main office.

Experience Modification Rating (EMR) for the last three years: _____

SAFETY

Please attach copies of OSHA No. 300 Logs for the last three years along with your most current log to-date.

Does your company have a written Safety Program? Yes ___ No ___

If yes, provide a copy or verify that a current copy is on file at Clark's Main Office.

Does your company have a Substance Abuse Program? Yes ___ No ___

Does your company have a safety officer? Yes ___ No ___

If YES, provide name: _____

Does your company hold weekly craft "tool box" talk safety meetings? Yes ___ No ___

Does your company provide foreman safety training? Yes ___ No ___

If YES, how often? _____

Does your company conduct safety inspections? Yes ___ No ___

If YES, how often? _____

FOR REFERENCE ONLY
Information Must be Submitted Online
<http://prequalification.clarkcc.com>

**CLARK CONSTRUCTION COMPANY
TRADE CONTRACTOR QUALIFICATION FORM**

Does your company give orientation/safety instruction to new hires? Yes ___ No ___

In the past three years, has your company been cited by state or federal OSHA for any willful violations? Yes ___ No ___

Please attach list on a separate sheet, the summary details for all violations including date, type, description and amount for the last three years

During the past three years, has your company experienced any employee fatalities? If YES, please attach details of the accident on a separate sheet Yes ___ No ___

EXPERIENCE

Attach list of recent major projects completed and work in progress, including average manpower required and anticipated duration of contract. Please include any projects completed with Clark Construction Company.

LIST THREE (3) SUPPLIER REFERENCES

Supplier	Project	Contact	Phone	Amount

Have you been deemed to be in default on any contract? Yes ___ No ___

Have you failed to complete any work awarded to you? Yes ___ No ___

Have you ever been adjudged bankrupt or filed a petition in bankruptcy? Yes ___ No ___

Have you filed any lawsuits or requested arbitration? Yes ___ No ___

(If you answered YES to any of the above, please attach a brief explanation)

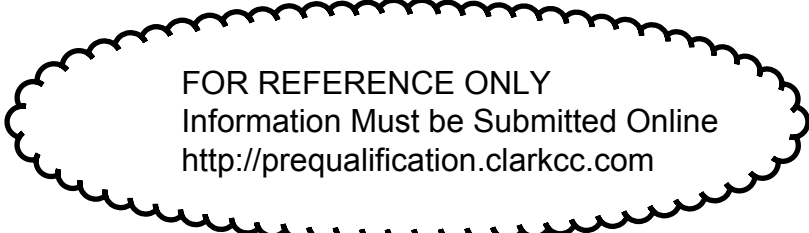
Please attach the following documents:

- MBE/WBE/DBE Certificate (if applicable)
- Current interim Financial Statement
- Last Certified Financial Statement
- Statement of Surety or Bid Bond
- Insurance carriers EMR verification
- MIOSHA 300 Logs for the last 3 years and the most current log to-date
- Safety Manual
- OSHA violations for the last 3 years
- Completed Project List
- Work in Progress List
- Trade Contractor Qualification Form
- Schedule of Values

As an Authorized Representative for _____
I hereby certify that the answers to the foregoing questions, and all documents contained herein, are true and correct. I understand that submission of this information is in no way a guarantee of contract award by the Owner or Clark Construction Company and that the information is provided for review and evaluation purposes only.

(Signature)

(Date)



CLARK CONSTRUCTION COMPANY
TRADE CONTRACTOR QUALIFICATION FORM

(Above Name typed or Printed)

(Title of Authorized Representative)

FOR REFERENCE ONLY

FOR REFERENCE ONLY
Information Must be Submitted Online
<http://prequalification.clarkcc.com>

SECTION 004126
PREQUALIFICATION AGREEMENT FORM

TRADE CONTRACTOR'S NAME: _____

PROJECT: FERRIS STATE UNIVERSITY
CONTRACT PROJECT MANAGEMENT SERVICES

FSU BID NO.: 14-069

CLARK PROJECT NO.: 14-2667

TRADE CONTRACTOR PREQUALIFICATION

OWNER: Ferris State University

ARCHITECT/ENGINEER Multiple A/E Firms (assigned per project)

CONSTRUCTION MANAGER: Clark Construction Company
Lansing, MI 48911

PROJECT MANAGER: Chris Bradburn
734-686-3025
cbradburn@clarkcc.com

PREQUALIFICATION AGREEMENT

By submitting and signing this prequalification agreement, Trade Contractor agrees to the following conditions:

1. Trade Contractor will submit good-faith bid proposals for ALL projects that apply to the scope(s) of work selected below. If a trade contractor fails to submit a bid proposal for any future bid release, Clark Construction Co. reserves the right to remove that firm from all future bid proposal invitations.
2. Trade Contractor agrees to complete the online prequalification process and submit to Clark Construction Co. for a detailed review and assessment. Trade Contractor's inclusion on the prequalified vendor list is contingent on approval of all prequalification information.

SECTION 004126
PREQUALIFICATION AGREEMENT FORM

TRADE CONTRACTOR'S NAME: _____

3. Selection of work categories that Firm is applying to be prequalified for. Circle all that apply:

- A. Concrete
- B. Masonry
- C. Carpentry
- D. General Trades
- E. Mechanical
- F. Plumbing
- G. Electrical
- H. Technology/Data/It
- I. Elevators
- J. Flooring (Carpet/Resilient)
- K. Hard Tile
- L. Painting
- M. Metal Studs, Drywall, Acoustical
- N. Glass/Glazing
- O. Furniture
- P. Casework
- Q. Laboratory Casework
- R. Audio Visual

SECTION 004126
PREQUALIFICATION AGREEMENT FORM

TRADE CONTRACTOR'S NAME: _____

LEGAL ADDRESS: _____

ZIP CODE: _____

CONTACT NAME: _____

TELEPHONE NO.: _____

FAX NO.: _____

EMAIL ADDRESS: _____

The Bidder declares the following legal status in submitting this Proposal: (Check one)

_____ A Corporation organized and existing under the laws
of the State of Michigan

_____ A Partnership

_____ Other

SIGNATURE

Respectfully submitted:

SIGNATURE

BY: _____

TITLE: _____

DATE: _____

WITNESSED BY: _____

Federal Employer Identification No.: _____

State License No.: _____

END OF SECTION

SECTION 004127
FSU INFORMATION AND DISCLOSURE FORM

TRADE CONTRACTOR'S NAME: _____

PROJECT: FERRIS STATE UNIVERSITY
CONTRACT PROJECT MANAGEMENT SERVICES

FSU BID NO.: 14-069

CLARK PROJECT NO.: 14-2667

TRADE CONTRACTOR PREQUALIFICATION

OWNER: Ferris State University

ARCHITECT/ENGINEER Multiple A/E Firms (assigned per project)

CONSTRUCTION MANAGER: Clark Construction Company
Lansing, MI 48911

PROJECT MANAGER: Chris Bradburn
734-686-3025
cbradburn@clarkcc.com

**PROFESSIONAL SERVICE ORGANIZATION (PSO)
INFORMATION & DISCLOSURE FORM**

The undersigned certifies that to the best of his/her knowledge: (check all that apply)

- There is no officer or employee of Ferris State University who has, or whose relative has, a substantial interest in any contract award subsequent to this proposal/bid.
- The names of any and all public officers or employees of Ferris State University who have, or whose relative has, a substantial interest in any contract award subsequent to this proposal/bid are identified by name as part of this submittal.
- Michigan's Business Corporations Act, MCL 450.2011, specifically provides that "[a] foreign corporation shall not transact business in this state until it has procured a certificate of authority to transact business from the administrator [with the Michigan Department of Labor and Economic Growth]." A foreign corporation is defined in the Act at MCL 450.1107(1) as "a corporation for profit formed under laws other than the laws of this state" My Michigan Business Authorization number is: _____
- The company listed below is a registered Minority or Woman owned business. I have included a copy of my company registration for documentation.

SECTION 004127
FSU INFORMATION AND DISCLOSURE FORM

TRADE CONTRACTOR'S NAME: _____

All vendor responses submitted become the property of the University. The responses will not be returned and may be subject to disclosure under Michigan's Freedom of Information Act ("FOIA") or other laws, therefore responses may be released to third parties without prior notice to respondents, as required to comply by law.

The undersigned further certifies that their firm (check one) IS or IS NOT currently debarred, suspended, or proposed for debarment by any federal entity. The undersigned agrees to notify the University of any change in this status, should one occur, until such time as an award has been made under this procurement action.

After carefully reviewing all the terms, conditions and requirements contained therein, the undersigned agrees to furnish such goods/services in accordance with the specifications/scope of work.

Company Name: _____

FEIN/TIN# _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

Web Address: _____

Name & Title _____

Signature _____

ADDENDA

The PSO hereby acknowledges receipt of the following Addenda:

Addendum No. _____

Dated _____

Submit this form, signed and completed, with Prequalification Agreement Form response

END OF SECTION

SECTION 005216
SAMPLE TRADE CONTRACT FORM

1. GENERAL

- 1.1 The Contract form to be used for this project shall be Clark Construction Company 's Trade Contract Form and Trade Contract Terms and Conditions, page 1-5, attached.

DO NOT SUBMIT
PREVIEW ONLY

TRADE CONTRACT



3535 Moores River Dr. • Lansing, MI 48911
517.372.0940 • fax: 517.372.0668 • www.clarkcc.com

VENDOR No.
DO NOT USE

CONTRACT No.

9999-001

THIS NUMBER MUST APPEAR ON ALL INVOICES

TO: ABC Excavating - Sample Company
1234 North Ave.
Smallville, MI 99999

Attn: Joe Smith
Phone: 1-234-567-8910
Fax: 1-234-567-8910

JOB: PROLOG 2008 SAMPLE PROJECT

DATE: 9/20/13

Perform all work per Specifications dated 1 and Plans referenced therein including Addendum 1, 2, 3, 4, Post Bid Addendum 1, 2, and Exhibit "A" - Trade Contractor Pre-Award Meeting form dated 9/20/13.

Scope of Work: This is the area where you would add any additional exhibits (ie: Exhibit B, C, etc.) and any other contract specific information. This field is unlimited and populates in the body of the contract.

Budget Codes	Description	Scheduled Cost
000101-01-000010	This field will default to the budget code line description	\$200,000.00
000101-01-000010	Site Utilities (this is the default for the budget code)	\$200,000.00
000101-02-000010	Construction manager's FEE	\$10,000.00
000102-03-000010	CM Fee For Building A-e	\$15,000.00

TOTAL AMOUNT OF THIS CONTRACT: \$425,000.00

Sample

NOTICE: Substitute forms must not be used. Signed copy certifies your acceptance of the terms and conditions appearing above and in the attached Trade Contract Conditions and/or exhibits to this Trade Contract.

Clark Construction Company
CONTRACTOR

ABC Excavating - Sample Company
TRADE CONTRACTOR/SUPPLIER

By Racheal Cline

By

Signature

Signature

Date

Date

TRADE CONTRACT CONDITIONS

The Trade Contractor agrees:

- 1) a. That it is bound to Clark Construction Company (Contractor herein) by the terms of all Contract Documents of Clark Construction Company's Contract with the Owner (hereinafter referred to as Prime Contract) (including, but not limited to drawings, specifications, general conditions, special and supplemental conditions and addenda), and to assume toward Clark Construction Company all obligations and responsibilities that Clark Construction Company by said documents, assumes toward the Owner.
 - b. The Trade Contractor binds itself to Clark Construction Company for the performance of Trade Contractor's Work in the same manner as Clark Construction Company is bound to the Owner for such performance under the Prime Contract. The Prime Contract or the pertinent parts of such Contract will be made available upon Trade Contractor's request.
 - c. The Contract Documents consist of the Trade Contract, these Trade Contract Conditions, the attached Trade Contract Rider (if any), the Prime Contract, the drawings, specifications, general conditions, special and supplemental conditions, change orders and all addenda.
 - d. The Work is the completed construction required of the Trade Contractor by the Contract Documents and includes all labor, material, and equipment necessary to perform the Work
 - e. The Contract price includes, and Trade Contractor shall obtain, all permits and licenses, and pay all permit and license fees, sales tax, use taxes, freight and unloading of material at jobsite necessary for the completion of the Work. Trade Contractor shall pay all taxes applicable to this Contract.
- 2) Trade Contractor shall timely furnish all items of the Work described in this Contract, including, but not limited to all labor, materials, equipment, services, layout, taxes, and any other expressly or impliedly required or necessary by inference to complete all portions of the Work in accordance with the Contract Documents.
- 3) a. Should any question arise with respect to the interpretation of the drawings and specifications, such questions shall be submitted to the Architect/Engineer as required and in like manner as the Prime Contract and such decision shall be final and binding upon the Trade Contractor. If there is no Architect/Engineer for this project, Clark Construction Company's decision shall be followed by the Trade Contractor.
 - b. This Contract and all Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of this Contract irreconcilably conflicts with a provision of any other Contract Document, the provision imposing the greater duty on the Trade Contractor shall govern.
- 4) Trade Contractor has carefully examined the site and all Contract Documents and, from its own investigation, has satisfied itself as to the nature and location of the Work, the general and local conditions, and all matters which may, in any way, affect its Work or its performance and that as a result of its examination and investigation, Trade Contractor understands the requirements of its Work.
- 5) Trade Contractor shall submit Shop Drawings, Product Data, and Samples for all items of its Work and obtain approval of same prior to installation in accordance with procedure required by the Contract Documents.
- 6) Trade Contractor agrees within ten (10) days after written demand, to cause the effect of any lawsuit, lien and/or claim on bond, filed by a party employed and/or contracted by Trade Contractor to be removed. In the event Trade Contractor shall fail to do so, Clark Construction Company is authorized to use whatever means in its discretion it may deem appropriate to cause said lawsuit, lien and/or bond claim to be removed or dismissed and Trade Contractor shall be responsible for the costs including all attorney fees incurred by Clark Construction Company. Trade Contractor may litigate any lawsuit, lien and/or bond claim provided Trade Contractor causes the effect thereof to be removed, promptly in advance, and shall do such things as are necessary to cause the Owner not to withhold any monies due to Clark Construction Company from Owner by reason of such lawsuit, lien and/or bond claim.
- 7) a. No extra or additional Work performed or material provided will be performed or provided by the Trade Contractor unless he obtains prior written approval and in the event Trade Contractor performs such extra or additional Work or provides material without prior written approval, then Trade Contractor thereby expressly waives any and all claims for additional payment for the extra or additional Work and/or the material provided.
 - b. Notwithstanding any other provision, if the Work for which the Trade Contractor claims extra compensation is determined by the Owner or the Architect/Engineer not to entitle Clark Construction Company to a change order or extra compensation, then Clark Construction Company shall not be liable to the Trade Contractor for any extra compensation for such Work, unless Clark Construction Company agreed, in writing prior to execution of the Work, to such extra compensation.
 - c. Trade Contractor shall make all claims for extras, additional compensation and for extensions of time to Clark Construction Company in accordance with the procedures set forth in the Prime Contract.

TRADE CONTRACT CONDITIONS

- d. If the Trade Contractor shall be materially delayed in the progress of the Work for reasons beyond the Trade Contractor's control, and under such circumstances as entitle Clark Construction Company to an extension of time under the Prime Contract, then Trade Contractor shall be entitled to a corresponding extension of time for completion of the Work. The extension of time herein provided shall be Trade Contractor's sole and exclusive remedy for any delay, and Trade Contractor hereby waives any claims for damages against Clark Construction Company or Owner by reason of delay.
- e. Trade Contractor agrees that Clark Construction Company shall not be liable to Trade Contractor for delay, acceleration, interference of any kind or changed conditions to Trade Contractor's Work by the act, neglect or fault of the Owner, Owner's agent, another Trade Contractor, or the Architect/Engineer, or by reason of fire or other casualty, or on account of any act of God, or any other cause beyond Clark Construction Company's control, or on account of any circumstances caused or contributed to by the Trade Contractor; provided, however, notwithstanding anything else contained herein, Clark Construction Company will be liable to the Trade Contractor for damages it incurs as a result of any acts or failures to act, by the Owner which delays, accelerates, interferes, interferes or changes the Trade Contractor's Work only to the extent the Owner is liable for such damages and actually pays Clark Construction Company for such damages; it being expressly understood that the only obligation Clark Construction Company has to the Trade Contractor under this provision is to pass on to the Owner any claim the Trade Contractor has for damages for delays caused by the Owner and to pay to the Trade Contractor any amounts which the Owner pays to Clark Construction Company as a result of such claim for Owner caused delays.
- 8) Trade Contractor shall be responsible for all clean-up in connection with this Contract. Trade Contractor shall be charged for clean-up services performed by Clark Construction Company for the Trade Contractor's operations.
- 9) As a condition precedent to payment, Trade Contractor shall furnish all waivers, releases and sworn statements required by any applicable construction lien law, bond law, or other applicable statute and such other evidence as may be required by Clark Construction Company, Owner, or Owner's lender to substantiate payment.
- 10) Payments hereunder will be on monthly installments commencing within 30 days after commencement of Work, equal to 90% of the value of completed Work, as estimated by Trade Contractor, approved by Clark Construction Company, and paid by Owner; so long as the Trade Contractor is not in default hereunder, installment payments shall be made within 10 days after Clark Construction Company has been paid by the Owner on account of the Trade Contractor's Work and to the extent therein; final payment within 30 days after completion and acceptance by the Architect and/or Engineer and approval and payment by the Owner. Acceptance of final payment by Trade Contractor shall constitute a full and final waiver of all of Trade Contractor's claims of whatever nature against Clark Construction Company and Owner on this project. No payments will be required unless Trade Contractor provides a sworn statement, waiver of lien and/or other evidence required by Clark Construction Company's billing instructions, any applicable construction lien or similar law and all documents necessary to assure Trade Contractor is meeting its Contractual obligations to the Trade Contractors and suppliers. All payments are to be made to the Trade Contractor only out of such equivalent payments actually received by Clark Construction Company for Work done by the Trade Contractor and Trade Contractor agrees actual payment by the Owner and receipt by Clark Construction Company shall be a condition precedent to any payment obligation of Clark Construction Company to the Trade Contractor. This paragraph shall be applicable even in the event Clark Construction Company posts a labor and material payment bond and performance bond. The Trade Contractor agrees that Clark Construction Company shall be under no obligation to pay the Trade Contractor for any Work performed on this construction project, unless Clark Construction Company has been paid herefor by the Owner. The provisions hereof, stating when progress and final payments are due are subject to the condition that Clark Construction Company receive payment from the Owner on account of Work performed by the Trade Contractor on this construction project. **The Trade Contractor expressly contemplates that payments to it are contingent upon Clark Construction Company's receiving payment from the Owner, the Trade Contractor expressly agreeing to accept the risk that it will not be paid for Work performed on the credit and ability of the Owner, and not of Clark Construction Company, and thus the Trade Contractor agrees that payment by the Owner shall be a condition precedent to any payment obligation of Clark Construction Company to the Trade Contractor.** The Trade Contractor agrees that the liability of the surety on Clark Construction Company's payment bond, if any, for payment to the Trade Contractor, is subject to the same conditions precedent as are applicable to Clark Construction Company's liability to the Trade Contractor.
- 11) To submit to Clark Construction Company applications for payment in such reasonable time as to enable Clark Construction Company to apply for payment. Trade Contractor shall make application for payment and invoices for monthly drawings in accordance with the billing instruction delivered with this Contract.
- 12) a. Clark Construction Company may deduct from any amount due or to become due to the Trade Contractor any sum or sums owing by the Trade Contractor to Clark Construction Company.
- b. In the event of any breach by the Trade Contractor of any obligation of this Contract, or in the event Clark Construction Company deems it necessary to protect against claims by other Trade Contractors or any claim against the Owner, Clark Construction Company, the surety for Clark Construction Company or the premises upon which the Work is being performed, which claim arises out of the Trade Contractor's performance of this Contract, Clark Construction Company has the right, but is not obligated, to retain out of any amount due or to become

TRADE CONTRACT CONDITIONS

due to the Trade Contractor, an amount sufficient to completely protect Clark Construction Company from any and all loss, damage or expense until the claim has been resolved to the satisfaction of Clark Construction Company.

- c. Clark Construction Company shall have the right, but is not required, to issue joint checks comprising funds due or to become due to the Trade Contractor and any of its lower-tiered Contractors or material suppliers for which Trade Contractor's sworn statement or any sworn statement identifies a sub-tier party as having sums due and owing.
 - d. This paragraph (12a-d) shall be applicable even though the Trade Contractor has posted a full payment and performance bond.
- 13) Trade Contractor shall be required to complete the Work and its several parts on or before the date or dates established by Clark Construction Company's progress schedule. Should the Trade Contractor, in the opinion of Clark Construction Company, at any time during the performance of the Contract, neglect or refuse to supply a sufficiency of properly skilled workman or of materials of proper quality, fail in any respect to prosecute the Work with promptness and diligence, fail to perform any terms of the conditions of the Contract, then Clark Construction Company may, after giving reasonable notice to the Trade Contractor, provide any necessary labor, materials or equipment required to assist Clark Construction Company in the completion of the Work and deduct the cost thereof from any monies due or thereafter due the Trade Contractor under this Contract, or any other Contract with Clark Construction Company. In the event the Trade Contractor shall fail to timely perform all or a portion of the Work required by the Contract, Clark Construction Company, upon three (3) working days' notice to the Trade Contractor, shall have the right to take over the Work required hereunder or any identifiable portion thereof with all materials, tools and appliances of the Trade Contractors on the premises and complete the Contract, or any specified portion thereof, charging the costs of said performance to the Trade Contractor. Clark Construction Company shall have the right to withhold all payments to the Trade Contractor until such costs have been paid to Clark Construction Company.
- 14) a. Trade Contractor agrees to employ sufficient manpower and methods to complete the Work in a timely fashion and will only employ persons who will Work at all times in harmony with other persons employed on the project and Trade Contractor agrees that labor disputes of any kind involving any other Contractors, Trade Contractors or their employees will not be permitted to occur on the project and such labor disputes as a result of those performing the Work hereunder shall not be cause for delay of the progress of Trade Contractor's Work and Trade Contractor will not be granted an extension of time in the event of such delay.
- b. Trade Contractor agrees to perform the Work and all parts thereof at such time and in such order and sequence as Clark Construction Company may direct and as required for the best possible progress of the Work and to conduct its Work and perform all activities incidental thereto so as to facilitate and so as not to interfere with or delay the Work or the best possible progress of the Work in several or all parts simultaneously, if directed to do so by Clark Construction Company.
- c. In the event the project's progress schedule shall fall behind or be delayed due to any cause of Trade Contractor, whether or not due to its own fault or neglect, the Trade Contractor may be required at the direction of Clark Construction Company, to Work such overtime or provide additional resources, for no additional compensation, as may be necessary to avoid delay and completion of the Work under this Contract.
- d. Clark Construction Company reserves the right to modify any approved progress schedule with respect to the required sequence or duration of the Work or any portion thereof and Clark Construction Company makes no representations that Trade Contractor will be able to commence, prosecute or complete the Work in accordance with any progress schedule.
- 15) Trade Contractor shall defend, protect, indemnify and save harmless the Owner, Clark Construction Company, their agents and assigns against any and all suits, damages, claims, demands, suits, costs, fines, attorney fees, and any expenses whatsoever arising from bodily injury, sickness, disease, (including death resulting therefrom), of any persons, or the damage or destruction of any property or Work required by this Contract, including loss of use, arising out of or in connection with the performance of any Work relating to this Contract including extra Work assigned to the Trade Contractor, based upon any act or omission, negligent or otherwise, (including active or passive negligence) of (a) the Trade Contractor or any of its agents, employees or servants, (b) any Tiered Trade Contractor, supplier, or material man of the Trade Contractor, or any agents, employees or servants thereof, (c) any other person or persons. The Trade Contractor's obligations of indemnification contained herein shall exclude only those matters in which the claim is caused by the sole negligence of the Owner, the Architect, Clark Construction Company, or any of their respective agents, servants and employees. The obligations herein shall apply regardless of whether such suits, damages, judgments, liabilities, interest, attorney fees, costs, etc., are caused in part by a party indemnified hereunder or by anyone acting under their direction, control, or on their behalf. Also the obligation herein 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 Trade Contractor under Workers Compensation Act, Disability Benefits Act or other employee benefit act. The obligation of indemnification shall survive the completion of the Contract. In the event an indemnified party (Clark Construction Company, the Owner, the Architect) takes any action, to enforce this indemnification provision the indemnified party shall be entitled to payment of actual attorney fees and costs incurred, from the Trade Contractor.
- 16) Trade Contractor shall, to the fullest extent permitted by law, secure, defend, protect, hold harmless and indemnify the Owner, Clark Construction Company, including any party Clark Construction Company is required to indemnify and the Architect and any of their respective agents, servants and employees against any liability, loss, claims, demands, suits, costs, fines, attorney fees, and any expenses whatsoever arising from bodily injury, sickness, disease, (including death resulting therefrom), of any persons, or the damage or destruction of any property or Work required by this Contract, including loss of use, arising out of or in connection with the performance of any Work relating to this Contract including extra Work assigned to the Trade Contractor, based upon any act or omission, negligent or otherwise, (including active or passive negligence) of (a) the Trade Contractor or any of its agents, employees or servants, (b) any Tiered Trade Contractor, supplier, or material man of the Trade Contractor, or any agents, employees or servants thereof, (c) any other person or persons. The Trade Contractor's obligations of indemnification contained herein shall exclude only those matters in which the claim is caused by the sole negligence of the Owner, the Architect, Clark Construction Company, or any of their respective agents, servants and employees. The obligations herein shall apply regardless of whether such suits, damages, judgments, liabilities, interest, attorney fees, costs, etc., are caused in part by a party indemnified hereunder or by anyone acting under their direction, control, or on their behalf. Also the obligation herein 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 Trade Contractor under Workers Compensation Act, Disability Benefits Act or other employee benefit act. The obligation of indemnification shall survive the completion of the Contract. In the event an indemnified party (Clark Construction Company, the Owner, the Architect) takes any action, to enforce this indemnification provision the indemnified party shall be entitled to payment of actual attorney fees and costs incurred, from the Trade Contractor.

TRADE CONTRACT CONDITIONS

- 17) Trade Contractor shall comply with all Federal, State and Local laws, codes, executive orders, and regulations and all local ordinances and regulations effective where the Work under this Contract is to be performed, and to pay all costs and expenses connected with such compliance, to pay for itself and its trade contractors, all wages, fees, and taxes of whatever nature required by the foregoing, and also to pay for itself and its trade contractors all taxes imposed by any State or Federal law for any employment insurance, pension, unemployment compensation, old age retirement/disability funds or any similar purpose and to furnish all necessary reports and information to the appropriate Federal, State and Local agencies, with respect to all of the foregoing the same as if Trade Contractor was in fact the Contractor, and to hold Clark Construction Company and the Owner harmless from any and all losses or damage occasioned by the failure of the Trade Contractor to comply with the terms of this paragraph.
- 18) a. In the event Clark Construction Company's Contract with the Owner contains a termination for convenience clause which is exercised by the Owner and/or Clark Construction Company, the rights, duties, and obligations of the parties herein shall be governed by the terms of the provisions of the convenience clause exercised by the Owner and/or Clark Construction Company.
- b. Clark Construction Company shall, at its sole option and discretion, have the right to terminate the Agreement for any reason whatsoever by providing the Trade Contractor with a written Notice of Termination to be effective immediately upon receipt by Trade Contractor of the written Notice of Termination. A termination by default of the Agreement shall, if wrongfully made, be treated as a termination for convenience under this clause. Whenever the Trade Contractor is terminated for convenience under this clause or is wrongfully terminated under any other clause of this Agreement, the Trade Contractor shall only be entitled to the actual direct costs of all labor and material expended on the job prior to the effective date of termination plus eight (8) percent of the actual direct costs or Trade Contractor shall be entitled to be paid a pro rata percentage of the total Agreement price which is equal to its percent of completion, whichever of the two methods provides the lowest sum to be paid to the Trade Contractor. In no event shall the Trade Contractor be entitled to anticipatory profit or consequential damage for any termination under this clause. In no event shall the Trade Contractor be entitled to assert a claim in quantum or any other measure of damage other than that stated herein.
- 19) Not to discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to his hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of sex, race, color, religion, national origin or ancestry. Any nondiscrimination agreement required by the Prime Contract shall be executed by the Trade Contractor and all of its tiered Contractors.
- 20) a. To provide general liability insurance, including comprehensive, products and completed operations, hazards, contractual and independent Contractors, as well as automobile liability, Worker's Compensation and employee liability coverage on all its employees and his Trade Contractors' employees engaged in executing this Contract and to provide all other insurance coverage required by the Contract Documents to the Prime Contract.
- b. Trade Contractor shall carry, and require its Trade Contractors to carry, identical insurance to that which Clark Construction Company is required to carry under the Prime Contract. Trade Contractor's insurance shall include contractual liability coverage applicable to its obligations pursuant to this Contract.
- c. Trade Contractor shall carry its insurance carried to and Clark Construction Company as an additional insured on all such policies excluding Worker's Compensation and automobile insurance prior to commencement of Work. Trade Contractor's insurance carriers shall be directed to notify Clark Construction Company 10 days in advance of cancellation of any insurance coverage required herein. The additional insured endorsement included on the Trade Contractor's insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the Trade Contractor. If the additional insureds have other insurance which is applicable to the project, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.
- d. The Trade Contractor agrees that the insurance coverage required by contract shall be continued throughout the duration of the warranty period specified by the contract. For Contracts that require Pollution Insurance coverage, such coverage shall be continued for three years beyond the substantial completion date of the project, or as specified by the Prime Contract, whichever duration is greater. Upon request by Clark Construction and/or Owner, Trade Contractor shall provide evidence/proof of insurance that the insurance coverage is being continued throughout the period specified by contract.
- 21) a. Clark Construction Company and Trade Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. Trade Contractor shall require similar waivers by its Trade Contractors.
- b. Clark Construction Company and Trade Contractor waive all rights against each other and the Architect for loss or damage to any equipment used in connection with the project which loss is covered by any property insurance. The Trade Contractor shall require similar waivers from all of its Trade Contractors. This provision shall not operate to relieve Clark Construction Company or Trade Contractor of responsibility for

TRADE CONTRACT CONDITIONS

any loss or damage to their own or rented property of their employees which is not to be included in and remain a part of the permanent construction.

- 22) Trade Contractor agrees to provide Clark Construction Company with all warranties required by Clark Construction Company in the Prime Contract which relate to Trade Contractor's Work. Such warranties shall commence and continue in effect for the full period of Clark Construction Company's obligation to the Owner as provided in the Prime Contract.
- 23) Trade Contractor shall, at its own cost and expense, protect its employees and other persons from the risk of death, injury or bodily harm arising out of or in any way connected with the Trade Contractor's Work and Trade Contractor shall protect all persons on or near the premises from all unreasonable risk of injury that arises during or as a result of the Work. Trade Contractor shall provide a safety coordinator for the Work. In addition to the above, the Trade Contractor shall strictly comply with Clark Construction Company's safety program for the project with all safety policies and procedures of Clark Construction Company.
- 24) This Contract is subject to modifications by Clark Construction Company in the event of fire, accidents, strikes, government acts, or other conditions beyond its control.
- 25) Time is of the essence for both parties, and they mutually agree to see to the performance of their Work and the Work of their Trade Contractors in accordance with applicable standards of care so that the entire project may be completed in accordance with the Contract Documents.
- 26) a. No waiver by Clark Construction Company of any breach of Trade Contractor or of a provision of this Contract shall be deemed a waiver of any other provision hereof or of any subsequent breach by Trade Contractor of such provision.
b. If any provision of this Contract is invalid or unenforceable to any extent, the remainder of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 27) That this Contract is the entire agreement of the parties and there is no verbal understanding or agreement between Trade Contractor and Clark Construction Company other than the conditions stated in this Contract.
- 28) The Trade Contractor agrees that Clark Construction Company shall have the sole discretion to elect to demand arbitration with the Trade Contractor for any dispute or claim arising out of or relating to this Contract or breach thereof or performance thereof, and if arbitration is elected by Clark Construction Company, then the arbitration shall be decided in accordance with the Construction Industry Rules of the American Arbitration Association. Arbitration proceedings shall be held in Southfield, Michigan, at the offices of the American Arbitration Association or such other place as designated by Clark Construction Company. In the event that Clark Construction Company shall elect not to demand arbitration, then the matter shall proceed in a court of competent jurisdiction for the dispute. The venue for any court proceeding shall be in a court of competent jurisdiction located in the County of Ingham, State of Michigan, or the appropriate United States District Court located in the State of Michigan. The decision and award of the arbitrators shall be final and binding upon both parties and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- 29) (Intentionally left blank)
- 30) That Clark Construction Company may cancel the Contract if not executed as specified and no alteration of any provision hereunder and no substituted form will be accepted by Clark Construction Company.
- 31) Clark Construction Company may deduct or set-off against any amount due Trade Contractor or any amount to become due Trade Contractor, any claim that Clark Construction Company may have against Trade Contractor arising out of this Contract, or any other Contract/transaction between Trade Contractor and Clark Construction Company.
- 32) Clark Construction Company and Trade Contractor agree that signatures on documents required by this contract, including but not limited to Change orders, Sworn Statements etc., may be delivered by electronic mail in lieu of an original signature. The signature on a document delivered by electronic mail is agreed to be an original signature and shall have the same force and effect as an original signature. The Trade Contractor agrees that Clark Construction Company may rely on signatures affixed to a document delivered by electronic mail and is immediately binding upon the Trade Contractor upon receipt of the document by Clark Construction Company by electronic mail.

PLEASE SIGN AND RETURN THESE CONDITIONS

NAME: _____

SECTION 007316
INSURANCE REQUIREMENTS

1. GENERAL

- 1.1 Trade Contractor shall provide general liability insurance, including comprehensive, products and completed operations, hazards, contractual and independent Contractors, as well as automobile liability, workman's compensation and employee liability coverage on all their employees and their Subcontractors' employees engaged in executing this Contract and to provide all other insurance coverage required by the Contract Documents to the Prime Contract.
- 1.2 The Trade Contractor agrees that the insurance coverage required by contract shall be continued throughout the duration of the warranty period specified by the contract. For Contracts that require Pollution Insurance coverage, such coverage shall be continued for three years beyond the substantial completion date of the project, or as specified by the Prime Contract, whichever duration is greater. Upon request by Clark Construction and/or Owner, Trade Contractor shall provide evidence/proof of insurance that the insurance coverage is being continued throughout the period specified by contract.
- 1.3 Trade Contractor shall carry, and require its Subcontractors to carry, identical insurance to that which the Construction Manager is required to carry under the Prime Contract. Trade Contractor's insurance shall include contractual liability coverage applicable to its obligations pursuant to this Contract.
- 1.4 Trade Contractor shall cause its insurance carriers to add the Construction Manager as an additional named insured on all such policies excluding Workers Compensation and automobile insurance prior to commencement of Work. Trade Contractor's insurance carriers shall be directed to notify the Construction Manager (thirty) 30 days in advance of cancellation of any insurance coverage required herein. The additional insured endorsement included on the Trade Contractor's operations performed by or on behalf of the Trade Contractor. If the additional insureds have other insurance which is applicable to the project, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.
- 1.5 As a condition of being awarded a Contract, the Trade Contractor must provide Clark Construction Company with satisfactory evidence of insurance coverage as follows. (Refer to sample Certificate of Insurance included in Certificates and Other Forms Section).
- a. Certificate of Insurance must be provided on the ACORD Certificate Form #25 or 25-S.
 - b. AM Best rating for each insurance carrier shall be at A, V or better.
 - c. The issuing company shall provide a thirty (30) day written notice of cancellation to the certificate holder.

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- d. The Owner, Clark Construction Company and the Architect/Engineer shall be listed on the Certificate as **“Additional Insured’s”** on the General Liability policy. The additional insured status shall include On-going Operations using **ISO General Liability Form #CG 20 10 01** and Products & Completed Operations using **ISO General Liability Form #CG 2037 10 01** or the insurance companies equivalent coverage endorsement.
 - e. Clark Construction Company is the Certificate Holder.
- 1.6 The Trade Contractor shall purchase from and maintain a company or companies’ lawfully licensed and authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Trade Contractor from claims set forth which may arise out of or result from the Trade Contractor’s operations under the Contract and for which the Trade Contractor may be legally liable whether such operations be performed by the Trade Contractor or by a Subcontractor or by anyone for whose acts any of them may be liable:
- a. Claims under workers’ compensation disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
 - b. Claims for damages because of bodily injury, occupational sickness, disease or death of the Trade Contractor’s employees;
 - c. Claims for damages because of bodily injury, sickness or disease or death of a person other than the Trade Contractor’s employees;
 - d. Claims for damages insured by usual personal injury liability coverage which are sustained (1), by a person as a result of an offense directly or indirectly related to employment of such person by the Trade Contractor, or (2) by another person;
 - e. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 - f. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of motor vehicle;
 - g. Claims involving contractual liability insurance applicable to the Trade Contractor’s obligations under the Contract;
 - h. The Trade Contractor’s liability insurance shall be written on a Commercial General Liability basis with coverage at least as broad as an **ISO General Liability Endorsement CG 0001 12 04** or later revised version and such coverage shall specifically include but shall not be limited to:

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INSURANCE REQUIREMENTS

1. Premises/Operations;
2. Independent Trade Contractor's Protective;
3. Products and Completed Operations;
4. Personal Injury Liability with Employment Exclusion deleted;
5. Contractual, including coverage for Trade Contractor's obligations under its Contract;
6. Owned, non-owned and hired motor vehicles; and
7. Broad Form Property Damage including Completed Operation.

1.7 The Trade Contractor shall, for the protection and benefit of the Owner, Clark Construction Company and the Architect/Engineer (hereinafter these parties are collectively referred to as "Trade Contractor Indemnities") and the Trade Contractor and as part of the Trade Contractor's efforts to satisfy the insurance obligation of Section 1. Procure, pay for and maintain in full force and effect at all times during the performance of the Trade Contractor's Work until final acceptance of the Trade Contractor's Work or for such duration as required policies of insurance issued by a responsible carrier or carriers acceptable to the Owner and Clark Construction Company which afford the coverages in the limits set forth below:

2. LIMITS OF LIABILITY

2.1 **Commercial General Liability** including Premises – Operations: Independent Trade Contractor's Protective; Products and Completed Operations; Broad Form Property Damage; Personal and Advertising Injury.

- a. General Aggregate shall not be less than \$2,000,000/per occurrence and it shall apply in total to this project only using the **ISO General Liability Endorsement CG 2503 03 97** or Trade Contractor's Insurance Carrier's equivalent coverage endorsement.
- b. Products – Completed/Operations Aggregate shall not be less than \$2,000,000 aggregate limit.
- c. Personal and Advertising Injury shall not be less than \$1,000,000 aggregate.
- d. Each Occurrence shall not be less than \$1,000,000.
- e. Fire Damage shall not be less than \$300,000 on any one (1) fire.
- f. Medical Expense shall not be less than \$10,000 on any one (1) person.
- g. Property Damage Liability shall provide X, C and U coverages.
- h. Broad Form Property Damage coverage shall include completed operations.
- i. All such insurance shall be written on an occurrence basis.

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INSURANCE REQUIREMENTS

2.2 **Automobile Liability**

- a. Automobile liability coverage shall be at least as broad as a CA 00 01 (3-10) or insurance companies equivalent endorsement.
- b. Coverage shall include: Any Auto, Hired Autos and Non-Owned Autos.
- c. Combined Single Limit shall not be less than \$1,000,000.
- d. All such insurance shall be written on an occurrence basis.

2.3 **Excess Liability**

- a. The Umbrella Form is to be provided.
- b. Each Occurrence shall not be less than \$1,000,000 over primary insurance and \$2,000,000 aggregate.
- c. Self-Insured Retention (SIR) shall not be more than \$10,000 for each occurrence.
- d. All such insurance shall be written on an occurrence basis.

2.4 **Workers Compensation and Employers Liability** (including the Proprietor/Partners/Executive Officers)

- a. Workers Compensation coverage shall be at least as broad as an **ISO Workers Compensation Endorsement WC 00 03 13** or insurance companies equivalent endorsement.
- b. Each Accident shall not be less than \$1,000,000.
- c. Disease – Policy Limit shall not be less than \$1,000,000.
- e. Disease – Each Employee shall not be less than \$1,000,000.
- f. All such insurance shall be written on an occurrence basis.

2.5. **Pollution Liability**

- a. Trade Contractors responsible for remediation, including containerization, transportation, or disposal of any hazardous or toxic wastes, materials, or substances requiring permits or licenses by state or Federal Law or regulation shall maintain Pollution Legal Liability Insurance with limit no less than \$1,000,000.

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INSURANCE REQUIREMENTS

- b. Coverage shall apply to sudden and gradual pollution legal liability including defense costs and completed operations.
 - c. All such insurance shall be written on an occurrence basis.
- 2.6 The Trade Contractor hereby agrees to deliver to Clark Construction Company within seven (7) days of the date of the Contract and prior to any equivalent or personnel being brought onto the Project site, certified copies of all insurance policies procured by the Trade Contractor or with consent of the Owner and Clark Construction Company Certificates evidencing the required coverages with limits not less than those specified in Section 1.5 hereto. Trade Contractor's indemnities shall be included as additional insured on Trade Contractor's Commercial General Liability Policy and shall be primary coverage to any valid and collectible insurance carried separately by any of the Trade Contractor's Indemnities. Further, all policies and Certificates of Insurance shall expressly provide that not less than thirty (30) days prior written notice shall be given the Owner, Clark Construction Company, and the Trade Contractor's Indemnities in the event of material alteration, cancellation, non-renewal or expiration of the coverage contained in such policy or evidenced by such certified copy or Certificate of Insurance.
- 2.7 In no event shall any failure of Clark Construction Company to receive certified copies or certificates of policies required under Section 1.0 or to demand receipt of such certified copies or certificates prior to the Trade Contractor commencing the Work be construed as a waiver by the Owner, and Clark Construction Company, of the Trade Contractor's obligations to obtain insurance pursuant to this Section 1.0. The obligation to procure and maintain any insurance required by this Section 1.0 is a separate responsibility of the Trade Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.
- 2.8 If the Trade Contractor fails to purchase and maintain or require to be purchased and maintained, any insurance required under this Section, the Owner, or Clark Construction Company, may, but shall not be obligated to, upon five (5) days written notice to the Trade Contractor, purchase such insurance on behalf of the
Trade Contractor and shall be entitled to be reimbursed by the Trade Contractor upon demand, or deduct the cost of insurance from the Contract amount.
- 2.9 When any required insurance, due to the attainment of a normal expiration date or renewal date shall expire, the Trade Contractor shall supply the Owner and Clark Construction Company Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage as is required by this Section. In the event any renewal or replacement policy, for whatever reason obtained or required is written by a carrier other than that with whom the coverage was previously placed or the subsequent policy differs in any way from the previous policy, the Trade Contractor shall also furnish the Owner and Clark Construction Company with a certified copy of the renewal or replacement policy unless, Clark Construction Company provides the Trade

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Contractor with prior written consent to submit only a Certificate of Insurance for any such policies. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and Clark Construction Company.

- 2.10 Any aggregate limit under the Trade Contractor's liability insurance shall, by endorsement, apply to this Project separately.
- 2.11 The Trade Contractor shall cause each of its Subcontractors to (1) procure insurance reasonably satisfactory to the Owner and Clark Construction Company, and (2) name the Trade Contractor, the Owner, Clark Construction Company, and Architect as additional insured under the Subcontractor's comprehensive general liability policy. The additional insured endorsement included on the Subcontractor's comprehensive general liability policy shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the Subcontractor. If additional insured have other insurance which is applicable to the Project, such other insurance shall be for the purpose hereof, on an excess or contingent basis. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.
- 2.12 The Trade Contractor shall provide for the Owner, Clark Construction Company, and Architect as additional named insured parties under the comprehensive general liability insurance and completed operations required herein, and the insurance shall be primary and non-contributory.

3. INDEMNIFICATION

- 3.1 The Trade Contractor shall secure, defend, protect, hold harmless and indemnify the Owner, Clark Construction Company, including any party that Clark Construction Company is required to indemnify, the Architect and any of their respective agents, servants and employees against any liability, loss, claims, demands, suits, costs, fines, attorney fees, and any expenses whatsoever arising

from bodily injury, sickness, disease (including death resulting therefrom), of any persons, or the damage or destruction of any property or Work required by this Contract including loss of use, arising out of, or in connection with, the performance of any Work relating to this Contract including additional Work assigned to the Trade Contractor, based upon any act or omission, negligent or otherwise, (including active or passive negligence) of (a) the Trade Contractor or any of its agents, employees or servants, (b) any Sub/Subcontractor, supplier, or materialman of the Trade Contractor, or any agents, employees or servants thereof, (c) any other person or persons. The obligations of indemnification contained herein shall exclude only those matters in which the claim is caused by the sole negligence of the Owner, the Architect, Clark Construction Company, or any of their respective agents, servants and employees. The obligations herein shall apply regardless of whether such suits, damages, judgments, liabilities, interest, attorney fees, costs, etc., are caused in part by a party indemnified hereunder or by anyone acting

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under their direction, control, or on their behalf. Also the obligations herein 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 Trade Contractor under workmen's compensation act, disability benefits act or other employee benefits act. This obligation for Indemnification shall survive the completion of the Contract.

- 3.2 In the event an Indemnified Party (Clark Construction Company, the Owner, the Architect) takes any action, to enforce the Indemnification Provision (3.1) the Indemnified Party shall be entitled to payment of actual attorney fees and costs incurred including all actual attorney fees and costs incurred by the Indemnified Party to enforce the Indemnification Provision from the Trade Contractor.

4. WAIVER OF SUBROGATION

- 4.1 A waiver of subrogation shall be provided by the Trade Contractor's insurance carrier for general liability and workers compensation related claims.

END OF SECTION