

3.4 **TAXES:** The Subcontract amount stated herein includes any and all federal, state, or municipal taxes now levied or in force, or imposed during the life of this Subcontract on any and all tangible personal property sold or transferred to CLARK CONTRACTORS, LLC or the Owner under this Subcontract, and the Subcontractor agrees to pay such tax or taxes on such property, the cost of which shall be considered included in the Subcontract amount mentioned herein. The Subcontractor agrees to pay, and hereby accepts exclusive liability for, any tax, assessment, or contribution for unemployment insurance or Social Security and income tax levied by the federal or any state government on the salaries or wages of all persons employed directly or indirectly by the Subcontractor, and the Subcontractor hereby agrees to comply with all the rules, regulations, and requirements of the federal, state, or municipal authority having jurisdiction thereof in order to relieve CLARK CONTRACTORS, LLC of liability.

ARTICLE 4 BONDS

4.1 **PERFORMANCE AND PAYMENT BONDS:** Bonds for maintenance, guarantee of workmanship and material, and to insure prompt and faithful performance of the obligations of the Subcontractor, including all warranties and obligations, shall be furnished by Subcontractor as specified or required by CLARK CONTRACTORS, LLC.

A. None Required

4.2 **CONTENTS OF BONDS:** All performance bonds and payment bonds shall incorporate this Subcontract by reference and shall provide that the surety waives consent to all changes, modifications, and amendments to this Subcontract. Any such changes, modifications, or amendments which decrease the Subcontract amount shall not in any way alter the amount of the performance bond and payment bond. Any changes, amendments, or modifications which increase the Subcontract amount shall be supported by an increase in the amount of the performance bond and the payment bond to the extent necessary to equal 100 percent of the Subcontract amount as increased.

ARTICLE 5 INSURANCE, INDEMNITY, AND ATTORNEYS' FEES

5.1.1 **INSURANCE REQUIREMENTS:** Subcontractor further agrees to comply with the more stringent of the project specific insurance requirements or the following minimum insurance requirements, use an insurance company satisfactory to CLARK CONTRACTORS, LLC (A. M. Best, A Minus VII or better), and furnish a certificate of insurance in duplicate immediately, and the endorsement naming CLARK CONTRACTORS, LLC and the Owner as an additional insured, covered as fully as the primary insured under Subcontractor's general liability, automobile liability, and excess liability policy. Should the subcontractor's actual coverage limits exceed those of the project specific insurance requirements or the minimum insurance requirements of CLARK CONTRACTORS, LLC shown in this Agreement or its Exhibits, the subcontractors coverage shall not be limited to the lesser project specific insurance requirements, any minimum limits set forth in this Agreement, or those amounts listed in the Sample Certificate, Exhibit "C". Subcontractor agrees to maintain coverages below for a period of five years or the statute of repose in the state the work is performed, whichever is longer.

A. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY – *Requirements listed on Sample Certificate, Exhibit "C".*

1. Minimum Employers' Liability Limits of:
\$500,000 E.L. Each Accident
\$500,000 E.L. Disease Each Employee
\$500,000 E.L. Disease – Policy Limit
2. Where permitted by law, coverage shall contain a waiver of subrogation in favor of CLARK Contractors, LLC and the Owner.

B. GENERAL LIABILITY - *Requirements listed on Sample Certificate, Exhibit "C".*

1. Minimum Limits of Liability (but show Maximum Limit Carried on Certificate):
\$1,000,000 Each Occurrence
\$100,000 Damage to Rented Premises
\$10,000 Medical Expense
\$1,000,000 Personal & Advertising Injury
\$2,000,000 General Aggregate
\$2,000,000 Products-Completed Operations Aggregate
2. Commercial general liability coverage shall include contractual liability assumed and shall not contain any separate exclusionary endorsements amending the definition of "insured contract" in the ISO document CG0001 (10/01) or later form. Form CG2139 is not acceptable as endorsement.
3. CLARK Contractors, LLC and Owner shall be named as additional insureds on a primary and non-contributory basis. Additional Insured status must apply to both "ongoing & completed operations coverage" and a copy of Additional Insured Endorsement CG 2010 (10/01) and CG 2038 (12/19) and CG 2037 (10/01) shall be attached to certificate of insurance (or state applicable ISO forms if these forms do not comply in your state). Attachment of policy form pages is not an acceptable alternative to the endorsement.
4. Commercial general liability coverage shall include coverage for "XCU" (explosion, collapse, and underground hazards) as provided in the ISO document CG0001. The coverage shall not contain any endorsements restricting or deleting any portion of the coverage.
5. Commercial general liability coverage shall include the "general aggregate per project".
6. Coverage shall contain a waiver of subrogation in favor of CLARK CONTRACTORS, LLC, and the Owner.
7. Products & completed operations coverage shall be maintained for a minimum of 5 years after completion of work.

C. AUTOMOBILE LIABILITY - *Requirements listed on Sample Certificate, Exhibit "C".*

1. Minimum Limits of Liability (but show Maximum Limit Carried on Certificate):
\$1,000,000 Combined Single Limit

2. CLARK CONTRACTORS, LLC and Owner shall be named as an additional insured. Endorsements shall be attached to certificate of insurance.
 3. Coverage shall contain a waiver of subrogation in favor of CLARK CONTRACTORS, LLC, and the Owner.
- D. **UMBRELLA/EXCESS LIABILITY** - *Requirements listed on Sample Certificate, Exhibit "C".*
1. Minimum Limit of Liability (but show Maximum Limit Carried on Certificate):
\$1,000,000 Each Occurrence
\$1,000,000 Aggregate
 2. CLARK CONTRACTORS, LLC and Owner shall be named as an additional insured. Endorsements shall be attached to certificate of insurance.
 3. Coverage shall contain a waiver of subrogation in favor of CLARK CONTRACTORS, LLC, and the Owner.
 4. Coverage shall Follow Form over underlying GL, Auto & WC policies.

E. **PROFESSIONAL LIABILITY INSURANCE [IF APPLICABLE]** - **«udProfessionalLiability»**

Requirements listed on Sample Certificate, Exhibit "C" and tables below.

Professional Liability insurance is required to be obtained by the Subcontractor for its acts or those for whom the Subcontractor is legally liable. Subcontractor shall maintain, at its own expense, a professional liability policy with a limit of liability not less than the amount shown in the applicable line of the tables below. Such insurance shall cover professional liability of the Subcontractor and indemnify the Contractor and Owner for any claims or damages arising out of the actual or alleged negligent acts, errors, or omissions in the rendering of or failure to render professional services. Insurance shall include a waiver of subrogation (endorsements shall be attached to certificate of insurance) by Subcontractor's insurer in favor of CLARK CONTRACTORS, LLC and Owner and meet the limits of liability indicated below:

The following Trades are Required to Provide Professional Liability Coverage (limits per table below):			
Building Concrete	Drywall	Electrical	Elevators
Fire Alarm	Fire Protection	Geopiers	HVAC
Pre-engineered Metal Bldg.	Roof Davits	Shoring	Skylights/Curtainwall
Steel Supplier	Structure Bracing	Structural Precast	

Subcontract / Work Order Value	Minimum Professional Liability Coverage
Less than \$2,000,000	\$1,000,000 per claim / \$1,000,000 aggregate
\$2,000,000 - \$3,000,000	\$2,000,000 per claim / \$2,000,000 aggregate
\$3,000,000 - \$5,000,000	\$2,000,000 per claim / \$5,000,000 aggregate
\$5,000,000 or more	\$2,000,000 per claim / \$10,000,000 aggregate

F. **POLLUTION INSURANCE [IF APPLICABLE]** - **«udPollution»**

Requirements listed on Sample Certificate, Exhibit "C" and table below.

Pollution insurance is required to be obtained by the Subcontractor. The Subcontractor shall maintain, at its own expense, a pollution liability policy with a limit of liability of \$1,000,000 per occurrence/\$1,000,000 aggregate. Such insurance shall cover all pollution legal liability of the Subcontractor and indemnify CLARK CONTRACTORS, LLC and Owner for any claims or damages arising out of a pollution event. CLARK CONTRACTORS, LLC and Owner shall be named as an additional insured. Insurance shall include a waiver of subrogation by Subcontractor's insurer in favor of CLARK CONTRACTORS, LLC and Owner. Endorsements for additional insured and waiver of subrogation shall be attached to certificate of insurance.

Coverage under Sections E. & F. may be procured through a Combined Professional Liability and Pollution Liability insurance policy.

The following Trades are Required to Provide Pollution Liability Coverage:	
Abatement	Exterior Wall Tile
Masonry	Roofers
EIFS	Wall Panels/Siding
Waterproofing	Ext. Glass and Glazing

- G. CLARK CONTRACTORS, LLC and Owner **MUST** be named on the certificate as Additional Insured under Subcontractor's General Liability and Automobile Liability. A copy of the Additional Insured Endorsements CG 2010 (10/01) **and** CG 2038 (12/19) **and** CG 2037 (10/01) (10/01) shall be attached to the certificate of insurance (or state applicable ISO forms if these forms do not comply in your state). Attachment of policy form pages is not an acceptable alternative to the endorsement.
- H. It will be the responsibility of the Subcontractor to maintain an equipment floater policy. CLARK CONTRACTORS, LLC does not have insurance coverage on the Subcontractor's equipment.

I. Evidence of workers compensation in the form of a certificate from a temporary labor agency will not be accepted.

5.1.2 The Subcontractor shall maintain in effect all insurance coverage required under this Subcontract at the Subcontractor's sole expense and with insurance companies mutually agreeable to the Contractor and Subcontractor. All insurance policies shall contain the provision that the coverages afforded thereunder shall not be canceled until at least thirty (30) calendar days' prior written notice has been given to the Contractor but in no event shall the notice be less than the number of days required by the Contract Documents for the Contractor to give notice to the Owner of any changes in coverage. If the Subcontractor's insurance carrier(s) will not endorse policies to provide thirty (30) day notice of cancellation to CLARK CONTRACTORS, LLC, the Subcontractor and its Insurance Agent of Record agree to notify CLARK CONTRACTORS, LLC within two days of receipt of such cancellation notice from the insurance carrier. In the event coverage is not renewed or canceled for non-payment of premium the Subcontractor and its Insurance Agent of Record agree to notify Clark in writing within two (2) days of receipt of such notice from the insurance carrier.

5.1.3 **NO IMPLIED WAIVER:** Any waiver of the subcontractor's obligation to furnish such certificate or maintain such evidence must be by written change order and signed by a Managing Member (Officer) of CLARK CONTRACTORS, LLC. Failure of CLARK CONTRACTORS, LLC to demand such certificate or other evidence of full compliance with these insurance requirements or failure of CLARK CONTRACTORS, LLC to identify a deficiency from evidence that is provided shall not be construed as a waiver of the subcontractors obligations to furnish and maintain such insurance, or as a waiver to the enforcement of any of the provisions at a later date.

5.2.1 INDEMNIFY, DEFEND, AND HOLD HARMLESS: Subcontractor shall defend, indemnify, and hold harmless Clark Contractors, LLC, the Owner, and their respective employees, members, owners, officers, and agents, from all claims, expenses (including attorney's fees), costs, damages, demands, actions, or liability for damage or destruction of property and for injury or death of persons arising from or related to the Subcontractor's performance of the Work and this Subcontract, but only to the extent of the Subcontractor's negligence or fault. Subcontractor's indemnity liability under this provision is not limited by the insurance requirements of this Subcontract or any provision of a workers' compensation statute. Notwithstanding the above, the Subcontractor shall defend, indemnify, and hold harmless Clark Contractors, LLC, the Owner, and their respective employees, members, owners, officers, and agents (the "Indemnitees") from and against all claims, expenses (including attorney's fees), costs, damages, demands, actions or liability arising from or related to the bodily injury or death of an employee of the Subcontractor, its agents, or Subcontractor's subcontractors of any tier.

5.2.2 It is the intention of the Subcontractor to defend and indemnify CLARK CONTRACTORS, LLC even in the event that any such claims, expenses, costs, damages, demands, actions, or liability arises in whole or in part from breach of contract, breach of warranties, express or implied, defects in material, products, workmanship or design or condition of property or premises.

5.2.3 Subcontractor shall also indemnify CLARK CONTRACTORS, LLC for any and all expenses incurred by CLARK CONTRACTORS, LLC for fines, penalties and corrective measures that result from acts by Subcontractor, its agents, employees, and assignees, in failing to comply with all safety rules, and regulations, including but not limited to Occupational Safety and Health Administration (OSHA) requirements and standards.

5.3 **ATTORNEYS' FEES:** Should CLARK CONTRACTORS, LLC employ an attorney to enforce any of the provisions hereof, or protect its interest in any matter arising under this Subcontract, or to collect damages for the breach of this Subcontract, or to prosecute or defend any suit resulting from this Subcontract, or to recover on the surety bond given by Subcontractor under this Subcontract, then Subcontractor and its surety, jointly and severally, agree to pay CLARK CONTRACTORS, LLC all reasonable costs, charges, expenses and attorney fees expended or incurred in connection therewith. Included within this indemnity provided in this Article 5, **the Subcontractor shall indemnify CLARK CONTRACTORS, LLC for all premiums, costs, fees, including attorneys' fees, incurred by CLARK CONTRACTORS, LLC to remove liens filed against the Project by subcontractors, suppliers, or otherwise as a result of nonpayment by the Subcontractor.**

ARTICLE 6 WARRANTY AND DEFECTIVE WORK

6.1 **WARRANTY:** The Subcontractor warrants all Work against defects in material or workmanship for the greater of (a) one (1) year from the date evidenced by the Certificate of Substantial Completion or (b) the period of time required in the Contract Documents.

6.2 **PERFORMANCE WARRANTY:** Subcontractor warrants that the Work shall be performed strictly in accordance with this Subcontract, the plans, specifications, addenda, manufacturer's recommendations and all other Contract Documents, and all Work shall be executed in a workmanlike manner by skilled and reputable workmen.

6.3 **SUBCONTRACT PERFORMANCE:** The Subcontractor shall use its best care, skill, and diligence in supervising and directing the Work. The Subcontractor shall have responsibility and control over performance of the Work, including construction methods, techniques, and means for coordinating and completing the various portions of the Work, unless the Subcontract gives other specific instructions concerning these matters.

6.4 **CONTRACTOR'S EQUIPMENT:** The Subcontractor, its agents, employees, subcontractors, or suppliers shall not use the Contractor's equipment, except upon receipt of express written permission of the Contractor's Project Superintendent and then only in accordance with the Contractor's terms and conditions for such use.