



**Purchase Order  
No. 2024-00000482**

**DATE 09/10/2024**

**Ph. (970) 256-4048**

**Fax**

**Ship To** Lincoln Park Golf Course  
Lincoln Park Golf Course  
800 Mantlo Circle  
GRAND JUNCTION, CO 81501

**Bill To** Lincoln Park Golf Course  
Lincoln Park Golf Course  
800 Mantlo Circle  
GRAND JUNCTION, CO 81501

**Vendor**  
VENDOR NO. 1474  
Clarke & Company, Inc.  
ACH  
3017 Hwy 50  
Grand Junction, CO 81503  
Phone: (970) 241-5317

**PAGE 1 of 1**  
**SHIP VIA**  
**DELIVER BY**  
**FREIGHT TERMS** FOB Dest, Frght Prepaid .Allow  
**Payment Terms: Net 30 Days**  
**Buyer Name:** Dolly Daniels  
**Buyer Email:** dollyd@gjcity.org

Award IFB-5501-24-DD

QUANTITY	UNIT	DESCRIPTION	UNIT COST	TOTAL COST
1.0000	Lump Su	CONTRACT SERVICES 305-751-370.8230 - Land Improve 18,032.00 F2412-F241201	18,032.0000	\$18,032.00
<b>PURCHASE ORDER TOTAL</b>				<b>\$18,032.00</b>

**Special Instructions:** PURCHASE ORDER No. MUST APPEAR ON ALL INVOICES, SHIPPERS, PACKAGES, CORRESPONDENCE  
**Tax Exempt No. 98-03544**

By: Dolly f. Daniels



### NOTICE TO PROCEED

Date: September 12, 2024

Contractor: Clarke & Co., Inc.

Project: Hydro Mulching IFB-5501-24-DD

In accordance with the Contract dated September 10, 2024, the Contractor is hereby notified to begin work on the Project on or before September 17, 2024.

The date of final completion is as stated in the solicitation documents.

### CITY OF GRAND JUNCTION, COLORADO

Dolly Daniels, Senior Buyer

Receipt of this Notice to Proceed is hereby acknowledged:

Contractor: Clarke & Co. Inc

By: DocuSigned by:  
*Wacey Clarke*

Print Name: Wacey Clarke

Title: President

Date: 9/12/2024





CITY OF GRAND JUNCTION, COLORADO

\*\*\*\*\*

**CONTRACT**

This CONTRACT made and entered into this 10th day of September 2024 by and between the City of Grand Junction, Colorado, a government entity in the County of Mesa, State of Colorado, hereinafter in the Contract Documents referred to as the "Owner" and Clarke & Co., Inc., hereinafter in the Contract Documents referred to as the "Contractor."

WITNESSETH:

WHEREAS, the Owner advertised that sealed Responses would be received for furnishing all labor, tools, supplies, equipment, materials, and everything necessary and required for the Project described by the Contract Documents and known as Hydro Mulching IFB-5501-24-DD.

WHEREAS, the Contract has been awarded to the above-named Contractor by the Owner, and said Contractor is now ready, willing, and able to perform the Work specified in the Notice of Award, in accordance with the Contract Documents.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

ARTICLE 1

Contract Documents: It is agreed by the parties hereto that the following list of instruments, drawings, and documents which are attached hereto, bound herewith, or incorporated herein by reference constitute and shall be referred to either as the "Contract Documents" or the "Contract", and all of said instruments, drawings, and documents taken together as a whole constitute the Contract between the parties hereto, and they are fully a part of this agreement as if they were set out verbatim and in full herein:

The order of contract document governance shall be as follows:

- The body of this Contract Agreement
- Solicitation Documents for the Project including Addendum; **Hydro Mulching (IFB-5501-24-DD)**
- Notice of Award
- Contractor's Response to the Solicitation
- Work Change Requests (directing that changed work be performed);
- Field Orders;
- Change Orders.

## ARTICLE 2

Definitions: The clauses provided in the Solicitation apply to the terms used in the Contract and all the Contract Documents.

## ARTICLE 3

Contract Work: The Contractor agrees to furnish all labor, tools, supplies, equipment, materials, and all that is necessary and required to complete the tasks associated with the Work described, set forth, shown, and included in the Contract Documents as indicated in the Solicitation Document.

## ARTICLE 4

Contract Time: Time is of the essence with respect to this Contract. The Contractor hereby agrees to commence Work under the Contract on or before the date specified in the Solicitation from the Owner, and to achieve Substantial Completion and Final Completion of the Work within the time or times specified in the Solicitation.

## ARTICLE 5

Contract Price and Payment Procedures: The Contractor shall accept as full and complete compensation for the performance and completion of all of the Work specified in the Contract Documents, for **the Lump Sum Amount of Eighteen Thousand, Thirty-Two and 00/100 Dollars (\$18,032.00) which reflects the 2% discount offered by Contractor.** If this Contract contains unit price pay items, the Contract price shall be adjusted in accordance with the actual quantities of items completed and accepted by the Owner at the unit prices quoted in the Solicitation Response. The amount of the Contract Price is and has heretofore been appropriated by the Grand Junction City Council for the use and benefit of this Project. The Contract Price shall not be modified except by Change Order or other written directive of the Owner. The Owner shall not issue a Change Order or other written directive which requires additional work to be performed, which work causes the aggregate amount payable under this Contract to exceed the amount appropriated for this Project, unless and until the Owner provides Contractor written assurance that lawful appropriations to cover the costs of the additional work have been made.

Unless otherwise provided in the Solicitation, monthly partial payments shall be made as the Work progresses. Applications for partial and Final Payment shall be prepared by the Contractor and approved by the Owner in accordance with the Solicitation.

Upon Final Completion of the Work under the Contract and before the Contractor shall receive final payment, the Owner shall publish at least twice in a newspaper of general circulation published in the County a notice that: 1. the Owner has accepted such Work as completed according to the Contract Documents; 2. the Contractor is entitled to final payment therefore; 3. Thirty (30) days after the first publication, specifying the exact date, the Owner shall pay the full balance due under the Contract; and 4. persons having claims for labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by the Contractor or a Sub-Contractor shall file a verified statement of the amount due and unpaid on account of such claim prior to the date specified for such payment.

Nothing herein shall be construed as relieving the Contractor and the Sureties on the Contractor's Bonds from any claim or claims for work or labor done or materials or supplies furnished in the execution of the Contract.

ARTICLE 6

Contract Binding: The Owner and the Contractor each bind itself, its partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contract Documents constitute the entire agreement between the Owner and Contractor and may only be altered, amended, or repealed by a duly executed written instrument. Neither the Owner nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part its interest under any of the Contract Documents and specifically, the Contractor shall not assign any moneys due or to become due without the prior written consent of the Owner.

ARTICLE 7

Severability: If any part, portion or provision of the Contract shall be found or declared null, void or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having the authority thereover, only such part, portion or provision shall be affected thereby and all other parts, portions and provisions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, City of Grand Junction, Colorado, has caused this Contract to be subscribed and sealed and attested in its behalf; and the Contractor has signed this Contract the day and the year first mentioned herein.

The Contract is executed in two counterparts.

**CITY OF GRAND JUNCTION, COLORADO**

DocuSigned by:  
By: Dolly Daniels  
Dolly Daniels, Senior Buyer

9/10/2024  
Date

**Clarke & Co., Inc.**

DocuSigned by:  
By: Wacey Clarke  
Wacey Clarke, President

9/10/2024  
Date



## **Invitation for Bid**

**IFB-5501-24-DD**

**Hydro Mulching**

### **Responses Due:**

September 3, 2024, before 3:00 p.m. MDT

**Accepting Electronic Responses Only**

**Submitted Through the**

**Rocky Mountain E-Purchasing System (RMEPS)**

**<https://www.bidnetdirect.com/colorado/city-of-grand-junction>**

(Purchasing Agent does not have access or control of the Vendor side of RMEPS. If the website or other problems arise during response submission, the Offeror **MUST** contact RMEPS to resolve the issue before the response deadline 800-835-4603)

**NOTE: All City solicitation openings will be held virtually, information in Section 1.8.**

### **Purchasing Agent:**

Dolly Daniels, Senior Buyer

**[dollyd@gjcity.org](mailto:dollyd@gjcity.org)** 970-256-4048

# **Invitation for Bid**

## Table of Contents

Section 1.0	Instructions to Offerors
Section 2.0	General Contract Conditions
Section 3.0	Statement of Work
Section 4.0	Offeror's Bid Form Price Bid Schedule Form



## 1.0. Instructions to Offerors

- 1.1. **Americans with Disability Act (ADA) Compliance Mandate:** Following HB21-1110. all documents produced and submitted in response to this solicitation must adhere to the provisions outlined in §§24-85-101, C.R.S., and subsequent sections, as well as the Accessibility Standards for Individuals with a Disability, as established by the Office of Information Technology under section §24-85-103 (2.5), C.R.S. Additionally, all documents must align with the State of Colorado's technology standards related to accessibility, including Level A.A. conformity with the latest iteration of the Web Content Accessibility Guidelines (WCAG) as integrated within the State of Colorado's technology standards.
- 1.2. **Required Review:** The Offeror is responsible for thoroughly reviewing all solicitation documentation to gain a comprehensive understanding of the scope, specifications, project requirements, and all associated rules, regulations, laws, conditions, instructions, and procurement policies related to the solicitation process and the Project or Work outlined in this Solicitation.
- 1.3. **Issuing Office:** This Invitation for Bid (IFB) is issued by the City of Grand Junction. All contact regarding this IFB is to be directed to the Purchasing Agent listed below:  
Dolly Daniels  
[dollyd@gjcity.org](mailto:dollyd@gjcity.org)  
Except for pre-bid or site visit meeting(s) all inquiries, concerns, clarifications, or communication about this solicitation, including process, specifications, and project scope, must be in writing to the Purchasing Agent. Other communication may result in disqualification.
- 1.4. **Purpose:** The City of Grand Junction, Colorado, by and through the Parks and Recreation Department is soliciting competitive pricing bids from qualified Firms interested in supplying and applying hydro-mulching services for approximately 8 acres at the Lincoln Park Golf Driving Range. All dimensions and Scope of Work shall be verified by Firms prior to submission of bids
- 1.5. **Owner:** The "Owner" is the City and its authorized representative(s); the term Owner or City may be used interchangeably throughout this Solicitation.
- 1.6. **Compliance:** All Offerors, by submitting a bid response, commit to adhere to all conditions, requirements, and instructions in this IFB as stated or implied herein or modified by addenda. Should the Owner omit anything necessary to the clear understanding of the requirements, or should it appear that various instructions conflict, the Offeror(s) shall secure instructions from the Purchasing Agent before the submittal deadline.
- 1.7. **Procurement Process:** The 2023 version of the City [Purchasing Policy and Procedure Manual](#) is contracting and applies to this Solicitation.

- 1.8. **Submission:** *Each bid response shall be submitted in electronic format only through the Rocky Mountain E-Purchasing System (RMSPS) BidNet Direct website link: (<https://www.bidnetdirect.com/colorado/city-of-grand-junction>)*. This site offers both “free” and “paying” registration options which allow for full access to the Owner’s documents and electronic submission of Bids. (Note: “free” registration may take up to 24 hours to process. Please Plan accordingly.) Please view the “**Electronic Vendor Registration Guide**” at <https://www.gjcity.org/501/Purchasing-Bids> for details. Purchasing Agent does not have access or control of the Vendor side of RMEPS. If the website or other problems arise during response submission, the Offeror **MUST** contact RMEPS to resolve the issue before the response deadline. **800-835-4603**.

Bids shall be formatted as directed in Section 4.0. Offeror’s Bid Form and Price Bid Schedule, Submittals that fail to follow this format may be ruled nonresponsive. The uploaded response shall be a single PDF document with all required information included.

To participate in the virtual solicitation opening, please utilize the following information and meeting link:

**Please join my meeting from your computer, tablet or smartphone.**

Bid Opening for Hydro Mulching

Sep 3, 2024, 3:00 – 3:30 PM (America/Denver)

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/624000037>

You can also dial in using your phone.

Access Code: 624-000-037

United States: [+1 \(872\) 240-3212](tel:+18722403212)

Join from a video-conferencing room or system.

Meeting ID: 624-000-037

Dial in or type: 67.217.95.2 or [inroomlink.goto.com](https://inroomlink.goto.com)

Or dial directly: 624000037@67.217.95.2 or 67.217.95.2##624000037

Get the app now and be ready when your first meeting starts:

<https://meet.goto.com/install>

- 1.9. **Modification and Withdrawal of Bids Before Opening:** Bids may be modified or withdrawn by the Offeror in writing, duly executing, and submitting to the place where Bids are to be submitted at any time before the Bid Opening. Bids may not be altered, modified, or amended after the submission date.
- 1.10. **Form for Price Bid:** All Price Bids must be made upon the Price Bid Schedule attached and state the amounts in words and figures and must be signed and acknowledged by the Offeror.

The Offeror shall specify a unit price in figures for each pay item for which a quantity is given and shall provide the products (in numbers) of the respective unit prices and quantities in the Extended Amount column. The total Bid price shall be equal to the sum of all extended amount prices. When an item in the Price Bid Schedule provides a choice to be made by the Offeror, the Offeror’s choice shall be indicated by the specifications for the particular item(s), and thereafter no further choice shall be permitted.

Where the unit of a pay item is a lump sum, the lump sum amount shall be shown in the "extended amount" column and included in the summation of the total Bid.

All blank spaces in the Price Bid Schedule must be properly filled out.

Bids (by corporations, LLCs, or similar entities) must be executed in the entity name by the president, vice president, etc., or other business officer accompanied by evidence of authority to sign. The entity addresses and state of organization of the entity shall be shown below the signature.

All names must be typed or printed below the signature.

The Offeror's Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Submittal Form.

The contact information to which communications regarding the Bid are to be directed must be shown.

- 1.11. **Exclusions:** No oral, telephonic, emailed, or facsimile bid will be considered.
- 1.12. **Contract Documents:** The complete IFB and Offeror's response compose the Contract Documents. Copies of bid documents can be obtained from the City Purchasing website, <https://www.gjcity.org/501/Purchasing-Bids>.
- 1.13. **Examination of Specifications:** Offerors shall thoroughly examine and be familiar with the Project Scope of Work. The failure or omission of any Offeror to receive or examine any form, addendum, or other document(s) shall in no way relieve any Offeror from any obligation concerning its Bid response. The submission of a Bid shall be taken as evidence of compliance with and understanding. Before submitting a Bid, each Offeror shall, at a minimum:
  - (a) Examine the *Contract Documents* thoroughly;
  - (b) Study and carefully correlate the Offeror's observations with the *Contract Documents*; and,
  - (c) Notify the Purchasing Agent of all conflicts, errors, ambiguities, or discrepancies in or among the *Contract Documents* within the designated inquiry period.
- 1.14. **Questions Regarding Statement of Work:** Any information relative to the interpretation of the Scope of Work and/or Specifications shall be requested in writing through email to the Purchasing Agent, no later than close of business on the day of the inquiry deadline. Questions received after the inquiry deadline may not be answered.
- 1.15. **Addenda & Interpretations:** An official response to questions, interpretations, corrections, and changes to this solicitation or extensions to the bid opening/receipt date shall be made by a written Addendum to the Solicitation by the Purchasing Agent. The sole authority to authorize addenda shall be vested in the Purchasing Division. Addenda will be issued electronically through the Rocky Mountain E-Purchasing website at <https://www.bidnetdirect.com/colorado/city-of-grand-junction> and posted on the City's



website at <https://www.gjcity.org/501/Purchasing-Bids>. The Owner is not bound by any oral representations, clarifications, or changes made in the written specifications by the Owner unless such clarification or change is provided in written addendum form from the City Purchasing Division. Offeror(s) must acknowledge receipt of all addenda in its bid.

- 1.16. **Taxes:** The Owner is exempt from State, County, and Municipal Sales Tax and Federal Excise Tax, therefore, all fees and costs shall not include taxes.
- 1.17. **Sales and Use Taxes:** The Firm and all subcontractors are required to obtain exemption certificates from the Colorado Department of Revenue for sales and use taxes. Bids shall reflect this method of accounting for sales and use taxes on materials, fixtures, and equipment.
- 1.18. **Offers Binding 60 Days:** Unless additional time is required by the Owner, or otherwise specified, all formal offers submitted shall be binding for sixty (60) calendar days following the opening date, unless the Offeror, upon request of the Purchasing Agent, agrees to an extension.
- 1.19. **Exceptions and Substitutions:** All bid responses meeting the intent of this IFB shall be considered for award. Offeror(s) taking exception to the specifications does so at the Offeror's risk. The Owner reserves the right to accept or reject any or all substitutions or alternatives. When offering substitutions and/or alternatives, the Offeror must state any exception(s) in the pertinent section. Exception/substitution, if accepted, must meet, or exceed the stated intent and/or specifications. The absence of stated exception(s) indicates the Offeror has not taken exceptions, and if awarded a Contract shall hold the Offeror responsible to perform in strict accordance with the specifications or scope of the bid and Contract Documents.
- 1.20. **Collusion Clause:** Each Offeror, by submitting a bid, certifies that it is not engaged in any collusive action(s) or activity(ies) that may violate any applicable federal or state antitrust laws, rules, and/or regulations. Any and all bids shall be rejected if there is evidence or reasonable belief of collusion among Offerors. The Owner retains the discretion to accept future bids for the same Work or commodities from participants in such collusion.
- 1.21. **Gratuities:** The Firm certifies and agrees that no gratuities or kickbacks were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Firm breaches or violates this warranty, the Owner may, at its discretion, terminate the Contract without liability to the Owner.
- 1.22. **Disqualification of Offerors:** A Bid will not be accepted from, nor shall a Contract be awarded to, any person, firm, or corporation that is in arrears to the Owner, upon debt or Contract, or that has defaulted, as surety or otherwise, upon any obligation to the Owner, or that is deemed irresponsible or unreliable.

Offerors may be required to submit satisfactory evidence that it is responsible, have practical knowledge of the Project bid upon, and have the necessary financial and other resources to complete the proposed Work.

Either of the following reasons, without limitation, shall be considered sufficient to disqualify an Offeror and Bid:

- (a) More than one Bid is submitted for the same Work from an individual, firm, or corporation under the same or different name; and
- (b) Evidence of collusion among Offerors. Any participant in such collusion shall not receive recognition as an Offeror for any future Work of the Owner until such participant has been reinstated as a qualified Offeror.

**1.23. Public Disclosure Record:** If the Offeror knows its employee(s) or subcontractors having an immediate family relationship with an Owner employee or elected official, the Offeror must provide the Purchasing Agent with the name(s) of the individuals. The individuals are required to file a "Public Disclosure Record," a statement of financial interest, before conducting business with the Owner.

**1.24. Public Opening:** The Bid response(s) will be opened in a virtual meeting immediately following the submittal deadline. The Offeror(s)/Bidder(s), its representatives, and interested persons may attend. Only the Offeror/Bidder entity name, entity city, and price will be disclosed.

## **2.0 General Contract Conditions**

**2.1. The Contract:** The IFB, submitted documents, and any negotiations, when properly accepted by the Owner, shall constitute an enforceable Agreement (Contract) equally binding between the Owner and Offeror. The Contract represents the entire and integrated agreement between the Owner and the Firm, collectively the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral, including the Bid documents. The Contract may be amended or modified with a Change Order or Amendment.

**2.2. The Work:** Includes all labor necessary to perform the Project required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such performance.

**2.3. Execution, Correlation, Intent, and Interpretations:** The Contract Documents shall be signed by the Owner and Offeror. By executing the Contract, the Offeror represents that it has familiarized itself with the conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents. The Contract Documents are complementary, and what is required by anyone, shall be as binding as if required by all. The Contract Documents intend to include all labor, materials, equipment, services, and other items necessary for the proper execution and completion of the Scope of Work.

**2.4. Responsibility for those Performing the Work:** The Firm shall be responsible to the Owner for the acts and omissions of all its employees and all other persons performing any of the Work under the Contract.

**2.5. Insurance Requirements:** The selected Firm agrees to procure and maintain, at its own

cost, policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Firm under the Contract. Such insurance shall be in addition to any other insurance requirements imposed by the Contract and/or by law. The Firm shall not be relieved of any liability, claims, demands, or other obligations assumed under the Contract because it fails to procure or maintain insurance in sufficient amounts, durations, or types.

The Firm shall procure and maintain and, if applicable, shall cause any subcontractor of the Firm to procure and maintain insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Owner. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Firm under the Contract. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Minimum coverage limits shall be as indicated below unless specified otherwise in the Special Conditions:

(a) Worker Compensation: Vendor shall comply with all State of Colorado Regulations concerning Workers' Compensation insurance coverage.

(b) General Liability insurance with minimum combined single limits of:

FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence and  
FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per job aggregate.

The policy shall be applicable to all premises, products and completed operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground (XCU) hazards. The policy shall contain a severability of interests' provision.

(c) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than:

FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence and  
FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate

This policy shall provide coverage to protect the Vendor against liability incurred as a result of the professional services performed as a result of responding to this Solicitation.

With respect to each of Firm's owned, hired, or non-owned vehicles assigned to be used in performance of the Work. The policy shall contain a severability of interests' provision.

**2.5.1. Additional Insured Endorsement:** The policies required by paragraphs (b), and (c) above shall be endorsed to include the City of Grand Junction, its elected and appointed Officials, employees, and volunteers as additional insureds. Every required policy shall be primary insurance, and any insurance carried by the Owner, its officers, or its employees, or carried by or provided through any insurance pool of the Owner, shall be excess and not contributory insurance to that provided by the Firm.

The Firm shall be solely responsible for any deductible losses under any policy required above.

- 2.6. Indemnification:** The Firm shall defend, indemnify, and save harmless the Owner, and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, or other claims of any character, name, and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the Firm, or of any Firm's agent, employee, subcontractor or supplier in the execution of, or performance under, any Contract which may result from bid award. The Firm shall pay any judgment with costs which may be obtained by and/or against the Owner growing out of or under the performance.
- 2.7. Miscellaneous Conditions & Material Availability:** The Offeror must accept responsibility for verification of material availability, production schedules, and other pertinent data before submission of a bid. It is the responsibility of the Offeror to notify the Owner immediately if the materials specified are discontinued, replaced, or not available for an extended period.
- 2.8. Time:** Time is of the essence concerning the completion of the Project and any other milestones or deadlines that are part of the Contract. It will be necessary for each Offeror to satisfy the City of its ability to complete the Work within the Contract Time outlined in the Contract Documents. The Contract Time is the period allotted in the Contract Documents for completion of the Work. The date of commencement of the Work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Contract, or such other date as may be established therein, or as established as entered on the Bid Form.
- 2.9. Progress & Completion:** The Firm will perform the Work as outlined in the Contract Documents, and carry out the Work diligently with sufficient resources, to achieve the specified completion dates.
- 2.10. Payment & Completion:** The Contract Sum is stated in the Contract and is the total amount payable by the Owner to the Firm for the performance of the Work under the Contract Documents. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of payment application, the Owner's Project Manager will promptly make such inspection and, when it finds the Work acceptable under the Contract Documents and the Contract is fully performed, the Owner will make payment in the manner provided in the Contract Documents.
- 2.11. Changes in the Work:** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract sum, and the Contract time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be executed under the applicable conditions of the Contract documents. A Change Order is a written order to the Firm signed by the Owner issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract sum or the Contract time. The Contract sum and the Contract time may be changed only by Change Order.

- 2.12. Claims for Additional Cost or Time:** If the Firm wishes to claim an increase in the Contract sum or an extension in the Contract time, it shall give the Owner written notice thereof within a reasonable time after the occurrence of the event giving rise to such claim. This notice shall be given by the Firm before proceeding to execute the Work, except in an emergency endangering life or property in which case the Firm shall proceed following the regulations on safety. No such claim shall be valid unless so made. Any change in the Contract sum or Contract time resulting from such claim shall be authorized by Change Order.
- 2.13. Minor Changes in the Work:** The Owner shall have the authority to order minor changes in the Work not involving an adjustment in the Contract sum or an extension of the contract time and not inconsistent with the intent of the Contract Documents.
- 2.14. Correction of Work:** The Firm shall promptly correct all Work found by the Owner as defective or as failing to conform to the Contract Documents. The Firm shall bear all costs of correcting such rejected Work including the cost of the Owner's additional Work thereby made necessary. The Owner shall give such notice promptly after discovery of the condition. Work shall be corrected to comply with the Contract Documents without cost to the Owner. If the Owner prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the payment or Contract sum, or if the amount is determined after final payment, it shall be paid by the Firm.
- 2.15. Acceptance Not Waiver:** The Owner's acceptance or approval of Work furnished hereunder shall not in any way relieve the Firm of its responsibility to maintain the high quality, integrity, and timeliness of its Work. The Owner's approval or acceptance of, or payment for, any Work shall not be construed as a future waiver of any right(s) under the Contract, or of any cause of action arising out of performance under this Contract.
- 2.16. Change Order/Amendment:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting Contract. All amendments to the Contract shall be made in writing by the City Contract Administrator.
- 2.17. Assignment:** The Firm shall not sell, assign, transfer, or convey the Contract resulting from this IFB, in whole or in part, without prior written approval from the Owner.
- 2.18. Cancellation of Solicitation:** Any solicitation may be canceled by the Owner or any solicitation response by an Offeror may be rejected in whole or in part when it is in the best interest of the Owner.
- 2.19. Compliance with Laws:** The Offeror must comply with all federal, state, county, and local laws governing its service and the fulfillment of the Work for and on behalf of the public. The Offeror hereby warrants that it is qualified to assume the responsibilities and render the Work described herein and has all requisite corporate authority and professional licenses in good standing as required by law.
- 2.20. Confidentiality:** All information disclosed by the Owner to the Firm for the Work to be done, or information that comes to the attention of the Firm during the course of performing such Work, is to be kept strictly confidential.



- 2.21. Conflict of Interest:** No public official and/or Owner employee will have interest in the Contract resulting from this IFB.
- 2.22. Contract Termination:** The Contract shall remain in effect until any of the following occurs: (1) Contract expires; (2) completion of Work; (3) final acceptance of Work or, (4) for convenience terminated by either party with a written *Notice of Cancellation* stating therein the reasons for such cancellation and the effective date of cancellation at least thirty (30) days past notification.
- 2.23. Employment Discrimination:** During the performance of any Work, the Offeror, by submitting a Bid, agrees to:
- 2.23.1.** Not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, citizenship status, marital status, veteran status, sexual orientation, national origin, or any legally protected status except when such condition is a legitimate occupational qualification reasonably necessary for the normal operations of the Firm. The Firm agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- In all solicitations or advertisements for employees placed by or on behalf of the Firm, the Firm asserts that it is an Equal Opportunity Employer.
- 2.23.2.** Notices, advertisements, and solicitations placed per federal law, rule, or regulation shall be deemed sufficient for meeting the requirements of this section.
- 2.24. Affirmative Action:** In executing a Contract with the City, the Firm agrees to comply with Affirmative Action and Equal Employment Opportunity regulations, as mandated by applicable federal, state, and local laws.
- 2.25. Immigration Reform and Control Act of 1986 and Immigration Compliance:** The Firm certifies that it does not and will not during the performance of the Contract employ workers without authorization services or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986 and/or laws regulating immigration compliance.
- 2.26. Ethics:** The Offeror/Firm shall not accept or offer gifts or anything of value and/or enter into any business arrangement with any employee, official, or agent of the Owner.
- 2.27. Failure to Deliver:** In the event of failure of the Firm to perform in accordance with the Contract Documents, the Owner, after due oral or written notice, may procure the products/materials from other sources and hold the Firm responsible for any and all costs resulting in the fulfillment of this solicitation. This remedy shall be in addition to any other remedies that the Owner may have.
- 2.28. Failure to Enforce:** Failure by the Owner at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the Owner to enforce any provision of the Contract Documents at any time under the terms thereof.

- 2.29. Force Majeure:** The Firm shall not be held responsible for failure to perform the duties and responsibilities imposed by the Contract due to legal strikes, fires, riots, rebellions, and acts of God beyond the control of the Firm unless otherwise specified in the Contract.
- 2.30. Independent Firm:** The Firm shall be legally considered an independent firm and neither the Firm nor its employees shall, under any circumstances, be considered servants or agents of the Owner. The Owner shall be at no time legally responsible for any negligence or other wrongdoing by the Firm, its servants, or agents. The Owner shall not withhold from the Contract payments to the Firm any federal or state unemployment taxes, federal or state income taxes, Social Security, or any other amounts for benefits to the Firm. Further, the Owner shall not provide to the Firm any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Owner for its employees.
- 2.31. Nonconforming Terms and Conditions:** A bid response that includes terms and conditions that do not conform to the terms and conditions of this IFB is subject to rejection as non-responsive. The Owner reserves the right to permit the Offeror to withdraw nonconforming terms and conditions from its bid response before a determination by the Owner of non-responsiveness based on the submission of nonconforming terms and conditions.

Items for non-responsiveness may include, but not be limited to:

- (a) Submission of the Bid on forms other than those supplied by the City;
- (b) Alteration, interlineation, erasure, or partial detachment of any part of the forms which are supplied herein;
- (c) Inclusion of unauthorized additions conditional or alternate Bids or irregularities of any kind which may tend to make the Bid incomplete, indefinite, or ambiguous as to its meaning;
- (d) Failure to acknowledge receipt of any or all issued Addenda;
- (e) Failure to provide a unit price or a lump sum price, as appropriate, for each pay item listed except in the case of authorized alternative pay items;
- (f) Failure to list the names of subcontractors used in the Bid preparation as may be required in the Solicitation Documents;
- (g) Submission of a Bid that, in the opinion of the Owner, is unbalanced so that each item does not reasonably carry its own proportion of cost, or which contains inadequate or unreasonable prices for any item;
- (h) Tying of the Bid with any other bid or Contract; and
- (i) Failure to calculate Bid prices as described herein.

**2.32. Evaluation of Bids and Offerors:** The Owner reserves the right to:

- Reject any and all Bids,

- To waive any and all informalities,
- Take into account any prompt payment discounts offered by the Offeror,
- Negotiate final terms with the successful Offeror,
- Take into consideration past performance of previous awards/Contracts with the Owner of any Contractor, Vendor, Firm, Supplier, or Service Provider in determining the final award. And
- Disregard any and all nonconforming, nonresponsive, or conditional Bids.

Discrepancies between words and figures will be resolved in favor of words. Discrepancies between Unit Prices and Extended Prices will be resolved in favor of the Unit Prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. The corrected extensions and totals will be shown in the tabulation of Bids.

The Owner may consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of subcontractors and other persons and organizations must be submitted. Operating cost maintenance considerations performance data, and guarantees of materials and equipment may also be considered by the Owner.

The Owner will conduct such investigations as deemed necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of the Offeror, proposed subcontractors, and other persons and organizations to do the Work per the *Contract Documents* to the City's satisfaction within the Contract Time.

The Offeror shall furnish the Owner with all information and data requested by the Owner to determine the ability of the Offeror to perform the Work. The Owner reserves the right to reject the Bid if the evidence submitted by, or investigation of such Offeror fails to satisfy the Owner that such Offeror is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein.

By submitting a Bid, each Offeror authorizes the Owner to perform such investigation of the Offeror as the Owner deems necessary to establish the responsibility, qualifications, and financial ability of the Offeror and, by its signature thereon, authorizes the Owner to obtain reference information concerning the Offeror and releases the party providing such information and the Owner from any and all liability to the Offeror as a result of such reference information so provided.

The Owner reserves the right to reject the Bid of any Offeror who does not pass any evaluation to the Owner's satisfaction.

If the Contract is to be awarded, it will be awarded to the Offeror that the Owner determines to be the lowest responsive and responsible bidder, meeting the Owner's interests.

The Owner reserves the right to accept or reject the Work contained in any of the Price Bid Schedules or alternates, either in whole or in part.



- 2.33. Ownership:** All documents, plans, prints, designs, concepts, and work prepared under the Contract, *etc.*, created by the Firm for the Project, shall become the property of the Owner. All information furnished by the Owner is and shall remain, the Owner's property.
- 2.34. Oral Statements:** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this document and/or resulting agreement. All modifications to this request and any agreement must be made in writing by the Owner.
- 2.35. Patents/Copyrights:** The Firm agrees to protect the Owner from any claims involving infringements of patent(s) and/or copyright(s). In no event shall the Owner be liable to the Firm for any claims, damages, awards, and/or costs of defense arising on the grounds of patent(s)/copyright(s) infringement. Patent/copyright infringement shall null and void any agreement resulting from response to this Solicitation.
- 2.36. Governing Law:** Any agreement as a result of responding to this IFB shall be deemed to have been made in, and shall be construed and interpreted by, the laws of the City of Grand Junction, Mesa County, Colorado. Any action arising out of or under the Contract shall be in District Court, 21<sup>st</sup> Judicial District, Mesa County, Colorado.
- 2.37. Expenses:** Expenses incurred in the preparation, submission, and presentation of a bid in response to this Solicitation are the responsibility of the Offeror and shall not be charged to the Owner.
- 2.38. Sovereign Immunity:** The Owner specifically reserves and asserts its rights to sovereign immunity under Colorado Law.
- 2.39. Public Funds/Non-Appropriation of Funds:** Funds for payment have been provided through the Owner's budget approved by the City Council for the stated fiscal year only. Colorado Law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the stated Owner's fiscal year shall be subject to budget approval. The Contract, if any, will be subject to and must contain a non-appropriation of funds clause/limitation on multi-year fiscal obligation(s) as required by Article X, Section 20. of the Colorado Constitution, and other applicable law(s).
- 2.40. Piggyback Purchasing:** Purchases as a result of this solicitation are primarily for the Owner. Other governmental entities may be extended the opportunity to utilize the resultant Contract award with the agreement of the successful provider and the participating agencies. All participating entities will be required to abide by the specifications, terms, conditions, and prices established in this Bid. The quantities furnished in this bid document are for only the Owner. It does not include quantities for any other jurisdiction. The Owner will be responsible only for the award for its jurisdiction. Other participating entities will place its awards on its respective Purchase Orders through its purchasing office(s) or use its purchasing card(s) for purchase/payment as authorized or agreed upon between the provider and the individual entity. The Owner accepts no liability for payment of orders placed by other participating jurisdictions that choose to "piggyback" on the Owner's solicitation. Orders placed by participating jurisdictions under the terms of this solicitation will indicate its specific delivery and invoicing instructions.

## **2.41. Definitions:**

- 2.41.1.** “City” or “Owner” is the City of Grand Junction, Colorado.
- 2.41.2.** “Consultant” or “Firm” is the person, organization, entity, or consultant identified as such in the proposal and is referred to throughout the Contract. The term Firm means the Firm or its authorized representative(s).
- 2.41.3.** “Offeror” refers to the person(s) legally authorized by the Firm to make an offer and/or submit a response fee proposal in response to the IFB.
- 2.41.4.** “Project” or “Work” refers to the endeavor outlined in this solicitation to create the product, service, or deliverable.
- 2.41.5.** “Services” includes all labor, materials, equipment, and/or professional skills necessary to produce the requirements of the Contract Documents.
- 2.41.6.** “Subcontractor” is a person(s) or organization that has a direct contract with the Firm to perform any of the service(s). The term subcontractor is referred to throughout the Contract and means the subcontractor or its authorized representative.

## **3.0 Statement of Work**

- 3.1. General:** The City of Grand Junction, Colorado, by and through the Parks and Recreation Department is soliciting competitive pricing bids from qualified Firms interested in supplying and applying hydro mulching services for approximately 8 acres as described, and for the purposes stated herein in accordance with the terms and conditions of this IFB.
- 3.2. General Specifications:**
  - 3.2.1.** The Firm will be required to provide the necessary labor, tools, equipment and supplies to perform the required services.
  - 3.2.2.** A total of 8 acres at the Lincoln Park Golf Driving Range is required to be hydro-mulched. There is no seed or fertilizer required.
  - 3.2.3.** 4 acres to be completed early September 2024 and the remaining 4 acres to be completed in mid-May 2025
- 3.3. Special Conditions & Provisions:**
  - 3.3.1 Personnel:** All workers assigned by the Firm servicing a City job shall be adequately and properly trained to perform their work properly and safely.  
  
The Firm is responsible for supplying equipment and staff capable of completing work in a safe and efficient manner.
  - 3.3.2 Completion Schedule:** 4 acres to be completed in early September 2024 and the remaining 4 acres to be completed mid-May 2025.

**3.3.3 Invoicing:** Each completed Work Request shall be invoiced separately. All invoicing shall be submitted no later than fourteen (14) calendar days after the completion of the Work. Invoices shall be submitted via email to [dougj@gjcity.org](mailto:dougj@gjcity.org)

- a. Body of invoice must contain at a minimum:
  - i. Contract Number
  - ii. Date of completion
  - iii. Total price

**3.3.4 Working Days and Hours:** The working days and hours shall be as stated in the General Contract Conditions or as mutually agreed upon with the following exception:

All work shall be performed between the hours of 7:00 AM to 5:00 PM, Monday through Friday.

**3.3.5. Authorized Representatives of the City:** Those authorized to represent the City shall include Purchasing Agent, Parks and Recreation Staff, and Inspectors employed by the City, only.

**3.3.6. Stockpiling Materials and Equipment:** All stockpiling/storage shall be in accordance with General Contract Condition Section 51.

**3.3.7. Clean-Up:** The Firm is responsible for cleaning up all loose materials that have been deposited or swept into gutters, and onto sidewalks and driveways as a result of sidewalk operations. The costs for all clean-up work shall be considered incidental and will not be paid for separately.

Firm will be held responsible for the cost of full cleanup of any chemical spills and the proper disposal of all containers, spill material and clean-up material.

**3.3.8 Incidental Items:** Any item of work not specifically identified or paid for directly, but which is necessary for the satisfactory completion of any paid items of work, will be considered as incidental to those items, and will be included in the cost of those items.

**3.3.9 Pricing:** Pricing shall be all inclusive to include but not be limited to: all labor, equipment, supplies, materials, freight (F.O.B. Destination – Freight Pre-paid and Allowed to each site), travel, mobilization costs, fuel, set-up and take down costs, and full-time inspection costs, and all other costs related to the successful completion of the project.

The Owner shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

The Firm shall submit its pricing utilizing the attached form in Section 4.0. Price Bid Schedule.

All fees/pricing will be considered by the Owner to be negotiable.

**3.3.10 Contract:** A binding Contract shall consist of (1) the IFB and any Addendum(s) thereto, (2) the Offeror’s response (Bid) to the IFB, (3) any clarification of the bid response, if applicable, and (4) the City’s Purchasing Department’s acceptance of the bid through a “Notice of Award.” All Exhibits and Attachments within the RFP are incorporated into the contract by reference.

A. The Contract expresses the complete agreement of the Parties and, performance shall be governed solely by the specifications and requirements contained therein and other laws as applicable.

B. Any change to the Contract, whether by modification and/or supplementation, must be accomplished by a formal Contract Amendment signed and approved by and between the duly authorized representative of the Offeror and the Contract Administrator or by a modified Purchase Order/Contract prior to the effective date of such modification. The Offeror expressly and explicitly understands and agrees that no other method and/or no other document, including acts and oral communications by or from any person, shall be used or construed as an amendment or modification to the Contract.

**3.3.11 City Project Manager:** The Project Manager for the Project is Doug Jones, Golf Course Supervisor, reachable at (970) 201-4117 or by email at [dougi@gjcity.org](mailto:dougi@gjcity.org). The Project Manager will be responsible for approving and accepting all Work within the Scope of Services. During the performance of the Services, all notices, letters, submittals, and other communications directed to the City shall be delivered to: Doug Jones, Golf Course Supervisor [dougi@gjcity.org](mailto:dougi@gjcity.org)  
City of Grand Junction, General Services

**3.3.12. Contract Administrator:** The Contract Administrator for the Project is Duane Hoff, Jr., reachable at (970) 244-1545. Contract-related inquiries, issues, and communications related to the Contract during the Project phase will be directed to: Duane Hoff, Jr., Contract Administrator  
[duaneh@gjcity.org](mailto:duaneh@gjcity.org)

**3.4. Contract Term:** The Contract will be effective from the date of execution by the Parties and services shall be provided one year from contract signing.

**3.5. Offeror Submittal Documents:** For the Offeror’s convenience, the following is a list of forms/items to be submitted with the Offeror’s price bid response. However, should a form/item not be listed in this section, but required in the solicitation documents, it is the Offeror’s responsibility to ensure all forms/items are submitted.

- Offeror’s Bid Form
- Price Bid Schedule

**3.6. IFB Tentative Time Schedule:**

- Invitation for Bid available August 26, 2024
- Inquiry deadline, no questions after this date August 29, 2024, 5:00 PM
- Final Addendum Posted August 30, 2024
- Submittal deadline for Bids September 3, 2024, 3:00 PM
- Notice of Award & Contract Execution September 5, 2024

**3.7. Questions Regarding Scope of Services:**

Dolly Daniels, Purchasing

[dollyd@gjcity.org](mailto:dollyd@gjcity.org)

## 4.0. Offeror's Bid Form

**Bid Date:** \_\_\_\_\_

**Project:** IFB-5501-24-DD "Hydro Mulching"

**Bidding Entity:** \_\_\_\_\_

**Name of Authorized Agent:** \_\_\_\_\_

**Agent Email:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Entity Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

The undersigned Offeror, in compliance with the Invitation for Bid, having examined the Instruction to Offeror(s), General Contract Terms and Conditions, Statement of Work, Specifications, and any Addenda thereto, having investigated the location of, and conditions affecting the proposed Work, hereby proposes to furnish all labor, materials and supplies, and to perform all Work for the Project following the Contract Documents, within the time set forth and at the prices stated below. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents, of which this Bid Submittal Form is a part.

The undersigned Offeror does hereby declare and stipulate that this offer is made in good faith without collusion or connection to any person(s) providing an offer for the same Work, and that it is made in pursuance of, and subject to, all terms and conditions of the Instructions to Offerors, the Specifications, and all other Solicitation Documents, all of which have been examined by the undersigned.

The Offeror also agrees that if awarded the Contract, to provide insurance certificates within ten (10) working days of the date of Notice of Award. Submittal of this offer will be taken by the Owner as a binding covenant that the Offeror will be prepared to complete the Project in its entirety.

The Owner reserves the right to make the award based on the offer deemed most favorable, to waive any formalities or technicalities, and to reject any or all offers. It is further agreed that this offer may not be withdrawn for a period of sixty (60) calendar days after closing time. Submission of clarifications and revised offers automatically establishes a new thirty-day (30) period.

Prices in the bid response have not knowingly been disclosed with another provider and will not be before the award.

- Prices in this bid response have been arrived at independently, without consultation, communication, or agreement to restrict competition.
- No attempt has been made nor will be to induce any other person or entity to submit a bid response to restrict competition.



- The individual signing this bid response certifies it is a legal agent of the Offeror, authorized to represent the Offeror, and is legally responsible for the bid concerning supporting documentation and prices provided.
- Direct purchases by the City of Grand Junction are tax-exempt from Colorado Sales or Use Tax. Tax-exempt No. 98-03544. The undersigned certifies that no Federal, State, County, or Municipal tax will be added to the submitted bid prices.
- City of Grand Junction payment terms shall be Net 30 days.
- Prompt payment discount of \_\_\_\_\_ percent of the net dollar will be offered to the Owner if the invoice is paid within \_\_\_\_\_ days after the receipt of the invoice. The Owner reserves the right to take into account any such discounts when determining the bid award that are no less than Net 10 days.

**RECEIPT OF ADDENDA:** The undersigned Offeror acknowledges receipt of the Addenda to the Solicitation, Specifications, and other Contract Documents.

State number of Addenda received: \_\_\_\_\_

The Offeror is responsible for ensuring all Addenda have been received and acknowledged.

*By signing below, the Undersigned shall agree to comply with all terms and conditions contained herein.*

**Print Full Entity Name:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Print Name of Signatory:** \_\_\_\_\_

**Title of Signatory:** \_\_\_\_\_

**PRICE BID SCHEDULE: IFB-5501-24-DD Hydro Mulching**

<b>Description</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Unit Pricing</b>	<b>Total Pricing</b>
Supplying and applying hydro mulching services for approximately 8 acres as described in Section 3.1	Acre	8	\$ _____/Acre	\$ _____

**Total Amount Written** \_\_\_\_\_ **Dollars**

**Print Full Entity Name:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

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





Purchasing Division

**ADDENDUM NO. 1**

**DATE:** August 29, 2024  
**FROM:** City of Grand Junction Purchasing Division  
**TO:** All Offerors  
**RE:** Hydro Mulching IFB-5501-24-DD

Offerors responding to the above referenced solicitation are hereby instructed that the requirements have been clarified, modified, superseded, and supplemented as to this date as hereinafter described.

Please make note of the following clarifications:

1. **Question(s)**
  - a. Can we get the project drawings or map?
  - b. Can you send us more specific project details (type up mulch that needs to be used and a rate of application)?
  - c. Are we able to access area by driving on some of the area before we hydro mulch?
  - d. Is water provided on site? If so, how does filling our machine work?

**Answer:** 2000 lbs./acre of wood fiber mulch should work fine, as the driving range is flat. We are using the mulch to help with seed germination and provide some protection from range balls that fly into the seeded area. There is a 2.5-inch water hose at the City Fleet shop or a standard 5/8 garden hose at our shop. The Fleet shop is about 3 miles from the LP driving range. With a boom gun they should be able to mulch from the sides of the seeded area. Attached is an aerial view of the range. The shaded area is the area we are seeding this year, with the other half next May. The drawing is not to scale.

The original solicitation for the project noted above is amended as noted. All other conditions of the subject remain the same.

Respectfully,

A handwritten signature in blue ink that reads "Dolly Daniels".

Dolly Daniels, Senior Buyer  
City of Grand Junction, Colorado



**NOTICE OF AWARD**

Date: September 10, 2024  
Company: Clarke & Co., Inc.  
Project: Hydro Mulching IFB-5501-24-DD

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You have been awarded the City of Grand Junction Contract for the Hydro Mulching (IFB-5501-24-DD) for a lump sum fee of **\$18,032.00**.

Please notify Doug Jones, Golf Course Supervisor at 970-201-4117 or [dougi@gjcity.org](mailto:dougi@gjcity.org) for project scheduling and return to the City Purchasing Division an acknowledged copy of this Notice of Award, signed Contract and Insurance Certificate, as per the contract documents.

CITY OF GRAND JUNCTION, COLORADO

DocuSigned by:  
Dolly Daniels 9/10/2024  
8161265D72844B4...  
Dolly Daniels, Senior Buyer

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**SUPPLIER ACKNOWLEDGEMENT**

Receipt of this Notice to Award is hereby acknowledged:

Company: Clarke & Co. Inc

By: Wacey Clarke  
2F66E3AEE92D4F7...

Title: President

Date: 9/10/2024

**4.0. Offeror's Bid Form**

**Bid Date:** September 3, 2024

**Project:** IFB-5501-24-DD "Hydro Mulching"

**Bidding Entity:** Clarke & Co., Inc.

**Name of Authorized Agent:** Wacey Clarke

**Agent Email:** wacey@gjclarkeandco.com

**Telephone Number:** 970 241 5317

**Entity Address:** 3017 Hwy 50

**City:** Grand Junction **State:** CO **Zip:** 81503

The undersigned Offeror, in compliance with the Invitation for Bid, having examined the Instruction to Offeror(s), General Contract Terms and Conditions, Statement of Work, Specifications, and any Addenda thereto, having investigated the location of, and conditions affecting the proposed Work, hereby proposes to furnish all labor, materials and supplies, and to perform all Work for the Project following the Contract Documents, within the time set forth and at the prices stated below. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents, of which this Bid Submittal Form is a part.

The undersigned Offeror does hereby declare and stipulate that this offer is made in good faith without collusion or connection to any person(s) providing an offer for the same Work, and that it is made in pursuance of, and subject to, all terms and conditions of the Instructions to Offerors, the Specifications, and all other Solicitation Documents, all of which have been examined by the undersigned.

The Offeror also agrees that if awarded the Contract, to provide insurance certificates within ten (10) working days of the date of Notice of Award. Submittal of this offer will be taken by the Owner as a binding covenant that the Offeror will be prepared to complete the Project in its entirety.

The Owner reserves the right to make the award based on the offer deemed most favorable, to waive any formalities or technicalities, and to reject any or all offers. It is further agreed that this offer may not be withdrawn for a period of sixty (60) calendar days after closing time. Submission of clarifications and revised offers automatically establishes a new thirty-day (30) period.

Prices in the bid response have not knowingly been disclosed with another provider and will not be before the award.

- Prices in this bid response have been arrived at independently, without consultation, communication, or agreement to restrict competition.
- No attempt has been made nor will be to induce any other person or entity to submit a bid response to restrict competition.



- The individual signing this bid response certifies it is a legal agent of the Offeror, authorized to represent the Offeror, and is legally responsible for the bid concerning supporting documentation and prices provided.
- Direct purchases by the City of Grand Junction are tax-exempt from Colorado Sales or Use Tax. Tax-exempt No. 98-03544. The undersigned certifies that no Federal, State, County, or Municipal tax will be added to the submitted bid prices.
- City of Grand Junction payment terms shall be Net 30 days.
- Prompt payment discount of 2 percent of the net dollar will be offered to the Owner if the invoice is paid within 10 days after the receipt of the invoice. The Owner reserves the right to take into account any such discounts when determining the bid award that are no less than Net 10 days.

**RECEIPT OF ADDENDA:** The undersigned Offeror acknowledges receipt of the Addenda to the Solicitation, Specifications, and other Contract Documents.

State number of Addenda received: 1

The Offeror is responsible for ensuring all Addenda have been received and acknowledged.

*By signing below, the Undersigned shall agree to comply with all terms and conditions contained herein.*

**Print Full Entity Name:** Clarke & Co., Inc.

**Authorized Signature:** Wacey Clarke

**Print Name of Signatory:** Wacey Clarke

**Title of Signatory:** President

**PRICE BID SCHEDULE: IFB-5501-24-DD Hydro Mulching**

Description	Unit of Measure	Quantity	Unit Pricing	Total Pricing
Supplying and applying hydro mulching services for approximately 8 acres as described in Section 3.1	Acre	8	\$ <u>2,300</u> /Acre	\$ <u>18,400.-</u>

Total Amount Written Eighteen thousand four hundred Dollars

Print Full Entity Name: Clarke & Co., Inc.

Authorized Signature: Wally Clarke

Date: 8-30-2024



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/12/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER FEDERATED MUTUAL INSURANCE COMPANY HOME OFFICE: P.O. BOX 328 OWATONNA, MN 55080	CONTACT NAME: CLIENT CONTACT CENTER	
	PHONE (A/C, No, Ext): 888-333-4949	FAX (A/C, No): 507-446-4664
E-MAIL ADDRESS: CLIENTCONTACTCENTER@FEDINS.COM		
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: FEDERATED RESERVE INSURANCE COMPANY		16024
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

**COVERAGES** **CERTIFICATE NUMBER: 114** **REVISION NUMBER: 0**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	N	1900262	07/01/2024	07/01/2025	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) EXCLUDED PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS & COMP/OP ACC \$2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS OWNLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	N	1900262	07/01/2024	07/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per Person) BODILY INJURY (Per Accident) PROPERTY DAMAGE (Per Accident)
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION	Y	N	1900263	07/01/2024	07/01/2025	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/ EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				PER STATUTE OTHER E.L EACH ACCIDENT E.L DISEASE EA EMPLOYEE E.L DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**SEE ATTACHED PAGE**

<b>CERTIFICATE HOLDER</b> CITY OF GRAND JUNCTION 2529 HIGH COUNTRY CT GRAND JUNCTION, CO 81501-5750	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_

### ADDITIONAL REMARKS SCHEDULE

AGENCY FEDERATED MUTUAL INSURANCE COMPANY		NAMED INSURED CLARKE & CO., INC. 3017 HIGHWAY 50 GRAND JUNCTION, CO 81503-9674
POLICY NUMBER SEE CERTIFICATE # 114.0		
CARRIER SEE CERTIFICATE # 114.0	NAIC CODE	EFFECTIVE DATE: SEE CERTIFICATE # 114.0

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

PROJECT #IFB-5501-24-DD  
 GJ HYDROMULCHING, 1240 GUNNISON AVE, GRAND JUNCTION, CO  
 THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED SUBJECT TO THE CONDITIONS OF THE ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU ENDORSEMENT FOR GENERAL LIABILITY.  
 THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED ON GENERAL LIABILITY SUBJECT TO THE CONDITIONS OF THE ADDITIONAL INSURED - OWNERS, LESSEES, OR CONTRACTORS - COMPLETED OPERATIONS ENDORSEMENT.  
 THE CERTIFICATE HOLDER IS AN ADDITIONAL INSURED SUBJECT TO THE CONDITIONS OF THE ADDITIONAL INSURED BY CONTRACT ENDORSEMENT FOR BUSINESS AUTO LIABILITY.  
 COMMERCIAL UMBRELLA FOLLOWS FORM ACCORDING TO THE TERMS, CONDITIONS, AND ENDORSEMENTS FOUND IN THE COMMERCIAL UMBRELLA POLICY.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED BY CONTRACT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE PART**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A. WHO IS AN INSURED for "bodily injury" and "property damage" liability is amended to include:  
Any person or organization other than a joint venture, for which you have agreed by written contract to procure bodily injury or property damage "auto" liability insurance arising out of operation of a covered "auto" with your permission. However, this additional insurance does not apply to:
- (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
  - (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
  - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
  - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
  - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- B. The coverage extended to any additional insured by this endorsement is limited to, and subject to all terms, conditions, and exclusions of the Coverage Part to which this endorsement is attached.
- In addition, coverage shall not exceed the terms and conditions that are required by the terms of the written agreement to add any insured, or to procure insurance.
- C. The limits of insurance applicable to such insurance shall be the lesser of the limits required by the agreement between the parties, or the limits provided by this policy.
- D. Additional exclusions. The insurance afforded to any person or organization as an insured under this endorsement does not apply:
1. To "loss" which occurs prior to the date of your contract with such person or organization;
  2. To "loss" arising out of the sole negligence of any person or organization that would not be an insured except for this endorsement.
  3. To "loss" for any leased or rented "auto" when the lessor or his or her agent takes possession of the leased or rented "auto" or the policy period ends, whichever occurs first.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS - AUTOMATIC STATUS WHEN  
REQUIRED IN A WRITTEN CONSTRUCTION  
AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II - Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement you have entered into with the additional insured; or
- 2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS - COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
City of Grand Junction 2529 High Country Ct Grand Junction, CO 81501-5750	Any coverage provided by this endorsement applies only to Project #IFB-5501-24-DD, GJ Hydromulching, 1240 Gunnison Ave, Grand Junction, CO for Hydromulch Work

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**Insured:**

Clarke & Co., Inc.  
3017 Highway 50  
Grand Junction, CO 81503-9674





**ADDITIONAL REMARKS SCHEDULE**

<b>AGENCY</b> Moody-Valley Insurance Agency, Inc.		<b>NAMED INSURED</b> Clarke & Co., Inc.	
<b>POLICY NUMBER</b>			
<b>CARRIER</b>	<b>NAIC CODE</b>	<b>EFFECTIVE DATE:</b>	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** 25      **FORM TITLE:** Certificate of Liability Insurance: Notes

**CONTRACTUAL LIABILITY APPLIES PER POLICY TERMS AND CONDITIONS**

**Pollution Liability:**  
 Blanket Additional Insured status applies only to the extent provided in form NENV8001 03/13 when required by written contract.  
 Blanket Waiver of Subrogation applies only to the extent provided in form NAVECPOTLKTII 03/13 when required by written contract.  
 Primary and Non-Contributory status only to the extent provided in form NENV8001 03/13 when required by written contract.

**Worker's Compensation:**  
 359-B Form Attached Includes Blanket Waiver of Subrogation. Status applies when required by written contract.

**IMPORTANT:**  
 The policy forms referenced will be sent via email only. To obtain copies, please send your request with the email address to [certrequestgj@moodyins.com](mailto:certrequestgj@moodyins.com)

**ENDORSEMENT NO. 2**

**Effective 12:01 AM Std Time:** 9/1/2024                      **Issued to:** Clarke & Co., Inc.  
**Policy Number:** SF24ECPU00864NC                      **Company:** Navigators Specialty Insurance Company

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSUREDS ENDORSEMENT**  
**(PRIMARY NON-CONTRIBUTORY)**

1. It is hereby agreed that the persons or entities scheduled below qualify as insureds under SECTION II. WHO IS AN INSURED, but only with respect to a **pollution incident** arising out of **your work**.

**Scheduled Additional Insureds**

Any clients for whom you perform **your work** but only when required by written contract with your client provided the contract is executed and effective prior to the date the pollution incident first commenced, and only for the lesser of the amount stated in the contract or the applicable limits of liability in this policy.

2. Solely with respect to the additional insureds scheduled above, the following is added to SECTION IV. CONDITIONS, paragraph 16. Other Insurance:

Notwithstanding any other provision to the contrary in this Policy, with respect to the additional insureds scheduled above, and only when required by written contract, the insurance afforded by this policy shall be primary and non-contributory with any other valid and collectible insurance and our obligations are not affected by any such other insurance.

3. Nothing in this endorsement shall operate or be construed to increase any of the limits of liability under this policy.
4. No coverage is afforded under this Policy for any **loss** arising out of a scheduled additional insured's own liability, sole negligence, or willful or deliberate misconduct.

All other terms, conditions, and exclusions shall remain the same.



## CONTRACTORS POLLUTION LIABILITY TOOLKIT II

Various provisions in this policy restrict coverage. This policy contains multiple coverages. Some coverages in this policy contain claims-made insuring agreements that apply only when a claim is first made against an insured and reported to us during the **policy period**.

For providing general notice of a **claim** or **loss**, please refer to SECTION V. RIGHTS AND DUTIES OF INSURED AND US. Special reporting requirements apply to any coverage for **emergency response costs**. Read the entire policy carefully to determine your rights and duties and what is and is not covered.

Throughout this policy the words you and your refer to the **named insured** shown in the Declarations, and any other person or organization qualifying as a **named insured** under this policy. The words we, us and our refer to the company, listed in the Declarations, providing this insurance.

The word insured means any person or organization qualifying as such under SECTION II. WHO IS AN INSURED. Words and phrases other than headings that appear in **bold type** have special meaning. Refer to SECTION VII. DEFINITIONS for the meaning.

In consideration of the premiums paid and upon our reliance on the statements made in the application to this policy, including any supporting documentation or information submitted in connection with the application, and in accordance with all the terms, conditions, exclusions and limitations contained in this policy, we agree to provide coverage to the insured as follows:

### SECTION I. COVERAGES AND COVERAGE EXCLUSIONS

#### 1. Insuring Agreements

The following coverages apply only if scheduled with limits in the Declarations:

##### A. Operations Pollution Liability

1. We will pay on behalf of the insured the **loss** the insured becomes legally obligated to pay because of a **pollution incident** that takes place in the **coverage territory**, is caused by **your work**, and results in:
  - a. a **claim** for **bodily injury, property damage** or **environmental damage** if such injury or damage takes place during the **policy period**; or
  - b. **emergency response costs** you incur responding to **environmental damage**.
2. Any progressive or indivisible **bodily injury, property damage** or **environmental damage**, including any continuation, change or resumption of such injury or damage, which occurs over a period of days, weeks, months or longer caused by continuous or repeated exposure to the same, related or continuous **pollution incident** shall be deemed to have occurred only once and only:
  - a. on the date of first exposure to such **pollution incident**; or
  - b. during the policy period of the first policy issued to you by us or **our affiliate** providing substantially the same coverage as provided by this policy for **bodily injury, property damage** or **environmental damage** that takes place during the **policy period**, but only if:



- (i) the date of first exposure cannot be determined; and
  - (ii) the **bodily injury, property damage or environmental damage** continues in fact during this **policy period**.
- 3. If the same, related or continuous **pollution incident**, or any continuation, change or resumption thereof, takes place over the periods of multiple policies issued to you by us or **our affiliate** providing substantially the same coverage as provided by this policy for **bodily injury, property damage or environmental damage** that takes place during the **policy period**:
  - a. all such **bodily injury, property damage or environmental damage** shall be deemed to have taken place only during the policy period of the first such policy in which any of the **bodily injury, property damage or environmental damage** took place; and
  - b. all **loss** arising from all such **bodily injury, property damage or environmental damage** shall be deemed to have arisen from one **pollution incident** and shall be subject to the limits of liability in effect for such first policy period.

## B. Site Pollution Liability

### 1. Discovery of a Sudden Pollution Incident

We will pay on behalf of the insured the **loss** the insured becomes legally obligated to pay because of **environmental damage or emergency response costs** caused by a **pollution incident** that:

- a. takes place in the **coverage territory**;
- b. is on, under or migrating from or through an **insured site**;
- c. first begins at a demonstrable time and place during the **policy period**; and
- d. is discovered by you no later than fifteen (15) calendar days after it first begins, and is reported to us no later than thirty (30) calendar days following discovery.

### 2. Third Party Claims Caused by a Sudden Pollution Incident

We will pay on behalf of the insured the **loss** the insured becomes legally obligated to pay because of a **claim** for **bodily injury, property damage or environmental damage** caused by a **pollution incident** that:

- a. takes place in the **coverage territory**;
- b. is on, under or migrating from or through an **insured site**;
- c. first begins at a demonstrable time and place during the **policy period**; and
- d. is discovered by you no later than fifteen (15) calendar days after it first begins, and is reported to us no later than thirty (30) calendar days following discovery.

This insurance applies only if the **claim** is first made against an insured and reported to us during the **policy period**, or, if applicable, during the **extended reporting period**.

When a **claim** is first made against an insured and reported to us during the **policy period** or, if applicable, during the **extended reporting period**, any subsequent **claim** arising out of the same, related or continuous **pollution incident**, or any continuation, change or resumption of such **pollution incident** that is first made against an insured and reported to us under a subsequent policy issued to you by us or by **our affiliate**, providing substantially the same coverage as this policy, will be deemed to have been first made and reported during the **policy period** of this policy. However, coverage for such **claims** under this policy will apply only if you have maintained with us or **our affiliate**, on a continuous and uninterrupted basis from the time of the first such **claim** is made and reported to us, pollution liability coverage that provides substantially the same or similar coverage as this policy.

### 3. Coverage B Exclusions

In addition to Section I.4. Common Exclusions below, this Coverage B. Site Pollution Liability does not apply to any **claim** or **loss**:

#### a. Asbestos and Lead-based Paint

arising out of any asbestos or asbestos-containing materials or lead-based paints, in, upon or applied to any man-made structures or objects. However, this exclusion does not apply to any:

- (1) **claim** for **bodily injury** or **property damage**; or
- (2) **environmental damage** because of:
  - (a) asbestos, asbestos-containing materials, or lead-based paints in soil, groundwater or any other body of water; or
  - (b) the inadvertent disturbance of asbestos, asbestos-containing materials, or lead-based paints. However, this policy does not apply to **cleanup costs**, removal, abatement or encapsulation of any such materials not inadvertently disturbed or otherwise still located in building structures or components as originally intended.

#### b. Change in Use

for **environmental damage** arising out of a change in use or operations at an **insured site** that results in remediation standards that are more restrictive than those standards applicable as of the **inception date**.

#### c. Pollution Incidents After an Insured Site is Divested

arising out of a **pollution incident** that begins after the date an **insured site** is sold, given away or abandoned.

#### d. Underground Storage Tanks

arising out of the presence or former presence of any **underground storage tank** at an **insured site**. However, this exclusion does not apply to any **underground storage tank**:

- (1) disclosed in the application for this insurance and subsequently listed on a Schedule of Underground Storage Tank endorsement attached to this policy;
- (2) removed or abandoned in-place prior to the **inception date**, provided any removal or abandonment in-place by you or on your behalf was conducted in compliance with all applicable federal, state, municipal or provincial regulations; or
- (3) the existence of which is unknown to any **responsible insured** as of the **inception date**.

### C. Environmental Crisis Management

We will pay those **crisis management fees** incurred by you as a direct result of a **crisis management event** that:

1. begins during the **policy period**;
2. is discovered by you and reported in writing to us during the **policy period**; and
3. directly results from a **pollution incident** to which this policy, or any policy issued to you by us to or **our affiliate** which this policy is a continuous renewal, applies.

We will pay those **crisis management fees** you incur even if coverage hereunder is still to be confirmed by us but we will stop paying such fees if we conclude that this insurance does not apply.

Knowledge by a **responsible insured** that a **crisis management event** has taken place constitutes discovery on your part. The **pollution incident** must be unknown to all **responsible insureds** as of the **inception date**, or the effective date of any policy issued to you by us or **our affiliate** to which this policy is a continuous renewal.

## 2. Defense

We will have the right and duty to defend the insured against any **suit** seeking **loss** to which this insurance applies. However, we will have no duty to defend the insured against any **suit** seeking **loss** to which this insurance does not apply. We may, at our discretion, investigate any **pollution incident** and settle any **claim** that may result. But:

- a. the amount we will pay for **loss** is limited as described in SECTION III. LIMITS OF LIABILITY; DEDUCTIBLE; and
- b. our right and duty to defend or continue defending ends when we have used up the applicable limits of liability in the payment of **loss**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section I.3. Supplementary Payments immediately below.

## 3. Supplementary Payments

A. We will pay, with respect to any **claim** we investigate or settle, or any **suit** against an insured that we defend:

1. All expenses we incur.
2. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the **suit**, including actual loss of earnings up to \$1,000 a day because of time off from work.
3. All court costs taxed against the insured in a **suit**. However, these court costs do not include attorneys' fees or attorneys' expenses taxed against the insured.
4. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of liability, we will not pay any prejudgment interest based on that period of time after the offer; or
5. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of liability.

These payments will not reduce the limits of liability.

B. If we defend an insured against a **suit** and an indemnitee of the insured is also named as a party to the **suit**, we will defend that indemnitee if all of the following conditions are met:

1. the **suit** against the indemnitee seeks **loss** for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an **insured contract**;
2. this insurance applies to such liability assumed by the insured;
3. the obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same **insured contract**;
4. the allegations in the **suit** and the information we know about the **pollution incident** giving rise to **loss** hereunder are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
5. the indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such **suit** and agree that we can assign the same counsel to defend the insured and the indemnitee; and

6. the indemnitee:

- a. agrees in writing to:
  - (1) cooperate with us in the investigation, settlement or defense of the **suit**;
  - (2) immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **suit**;
  - (3) notify any other insurer whose coverage is available to the indemnitee; and
  - (4) cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- b. provides us with written authorization to:
  - (1) obtain records and other information related to the **suit**; and
  - (2) conduct and control the defense of the indemnitee in such **suit**.

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us, and necessary litigation expenses incurred by the indemnitee at our request, will be paid as Supplementary Payments. Notwithstanding the provisions in Section I.4. Common Exclusions, paragraph a.2., such payments will not be deemed to be **loss** and will not reduce the limits of liability.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limits of liability in the payment of **loss** under this policy, or any of the conditions set forth above in this paragraph B. are no longer met.

#### 4. Common Exclusions

The following exclusions apply to all coverages under this policy.

This insurance does not apply to:

##### a. Contractual Liability

any **claim** or **loss** arising out of the liability of others assumed by any insured in a contract or agreement. This exclusion does not apply to liability:

- 1. that the insured would have in the absence of the contract or agreement; or
- 2. assumed in a contract or agreement that is an **insured contract**, provided any injury or damage to which this policy applies begins subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be **loss** to which this policy applies, provided:
  - (a) liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**; and
  - (b) such attorney fees and litigation expenses are for defense of that party in a **suit** in which **loss** to which this insurance applies are alleged.

##### b. Criminal Fines, Penalties or Assessments

criminal fines, criminal penalties or criminal assessments.

##### c. Damage to Property

property damage or environmental damage to:

1. real or personal property you own, rent or occupy, other than property you use for temporary storage or staging in connection with **your work**;
2. personal property loaned to you; or
3. personal property in the care, custody or control of an insured, other than an insured which is an insured because of an **insured contract**.

However, this exclusion does not apply to **environmental damage** to which Coverage 1.B. Site Pollution Liability applies.

**d. Damage to Your Work**

**property damage** or **environmental damage** to **your work** arising out of it or any part of it. However, this exclusion does not apply:

1. if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor; or
2. to **completed operations**.

**e. Employer's Liability**

**bodily injury** to:

1. your **employee** arising out of and in the course of:
  - (a) employment by you; or
  - (b) performing duties related to the conduct of your business; or
2. the spouse, child, parent, brother or sister of that **employee** as a consequence of paragraph 1. immediately above.

This exclusion applies whether you may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury. However, this exclusion does not apply to liability you assume in an **insured contract**.

**f. Expected or Intended Injury or Damage**

**bodily injury, property damage** or **environmental damage** expected or intended from the standpoint of a **responsible insured**.

**g. Intentional Acts / Non-compliance**

any **claim** or **loss** based upon or arising out of a **responsible insured's**:

1. dishonest, fraudulent, malicious, or knowingly wrongful act; or
2. willful or deliberate disregard of, or failure to comply with, **environmental laws** including any statute, regulation, ordinance, administrative complaint, notice of violation, directive, order, or instruction made by or on behalf of any governmental body or agency, applicable to a **pollution incident**.

However, paragraph 2. of this exclusion does not apply if the **responsible insured's** action was taken in good faith in reliance upon written advice of outside counsel received in advance of such non-compliance or to **emergency response costs**.

**h. Nuclear Materials**

any **claim** or **loss** based upon or arising out of the radioactive, toxic or explosive properties of nuclear material and with respect to which:

1. you are required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
2. you are, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**i. Prior Knowledge**

1. **bodily injury, property damage, environmental damage, or emergency response costs** that occurred in whole or in part prior to the **policy period** and was known to any **responsible insured** prior to the **policy period**. Any continuation, change or resumption of such **pollution incident** will be deemed to have been known to the **responsible insured** prior to the **policy period**; or
2. with respect to Coverage 1.A. Operations Pollution Liability, a **pollution incident** known by a **responsible insured** as of the **inception date**. However, subpart 2. of this exclusion does not apply to any known **pollution incident** that, as of the **inception date**, results from the work or operations of others and not **your work**.

**j. Related Entities and / or Individuals**

any **claim** made against you by any person, entity or organization:

1. that is owned, managed, or controlled by you or in which you have an ownership interest in excess of twenty-five (25%) percent;
2. of which you are an officer, partner, or director; or
3. that owns, operates, or manages you.

**k. Transportation**

any **claim** or **loss** based upon or arising out of **property damage** to any conveyance including, but not limited to, any **motor vehicle**, rolling stock, aircraft or water craft. However, this exclusion does not apply to any **claims** brought by third-party carriers alleging negligence on your part.

**l. War**

**bodily injury, property damage or environmental damage**, however caused, arising, be it directly or indirectly, out of:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**m. Waste Disposal**

any **claim** or **loss** arising out of the disposal of any products or materials, including, but not limited to, **your products** or waste, that have been delivered to any premises, location, or facility for the purpose of treatment, storage, processing, recycling or disposal. However, this exclusion does not apply to a **pollution incident** on, under or migrating from or through a **waste disposal facility** or a third-party jobsite at which you physically perform **your work** and the **pollution incident** is the result of that work.



**n. Workers' Compensation and Similar Laws**

any **claim** or **loss** arising out of any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**o. Your Product**

any **claim** or **loss** arising out of **your product** after you have relinquished possession of it to a third party. This exclusion does not apply to **your products** that you install or repair as part of **your work**.

**SECTION II. WHO IS AN INSURED**

In addition to the **named insured** listed in Item 1. of the Declarations, and any **named insured** added to this policy by endorsement, the following persons or entities are insureds under this policy:

1. If you are designated in the Declarations as:

- a. an individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. a partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. a limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. an organization other than a partnership, joint venture or limited liability company, you are an insured. Your **executive officers** and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. a trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your **volunteer workers**, but only while performing duties related to the conduct of your business, or your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these **employees** or **volunteer workers** are insureds for:

(1) **bodily injury**:

- (a) to you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company); or
- (b) for which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) immediately above.

(2) **property damage** or **environmental damage** to property:

- (a) owned, occupied or used by, or
- (b) rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by,

you, any of your **employees**, **volunteer workers**, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your **employee** or **volunteer worker**), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) with respect to liability arising out of the maintenance or use of that property; and
    - (2) until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain a majority ownership interest, will qualify as a **named insured** if there is no other similar insurance available to that organization. However, coverage for any newly acquired or formed organization:
- a. is afforded only until the one hundred and twentieth (120<sup>th</sup>) days after you acquire or form the organization, or the end of the **policy period**, whichever is earlier;
  - b. applies only if you provide written notification to us within one hundred and twenty (120) days after the date of such acquisition or formation or before the end of the **policy period**, whichever is earlier;
  - c. if, in our sole discretion, we determine additional premium is to be charged you are responsible to pay the additional premium when due; and
  - d. does not apply to any **bodily injury, property damage, environmental damage, or crisis management event** that occurred, or any **pollution incident** that began, before you acquired or formed the organization.

No coverage will be afforded subsequent to the one hundred and twentieth (120<sup>th</sup>) day after you acquire or form any new organization unless and until such organization is specifically endorsed onto the policy by us. The **first named insured** may request that any such newly acquired or formed organization be added to the policy; however, in our sole discretion, additional underwriting information and premium may be required. If we consent to adding any newly acquired or formed organization, the **first named insured** is responsible to pay any additional premium when due.

- 4. Any person or organization that has at least a majority ownership or controlling interest in you is an insured, but only with respect to **bodily injury, property damage, environmental damage, or emergency response costs** arising out of **your work** and solely with respect to their financial control of you.
- 5. Any person or organization, including your clients for whom you perform **your work**, whom you agree to include as an insured in an **insured contract** is an insured, but only with respect to a **pollution incident** arising out of **your work** and only:
  - a. if the contract or agreement is executed and effective prior to the date any **pollution incident** to which this policy applies first began; and
  - b. for the lesser of the:
    - (1) minimum limits required by the contract, agreement or permit; or
    - (2) applicable limits of liability in this policy.

No person, organization or entity is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations.

### SECTION III. LIMITS OF LIABILITY; DEDUCTIBLE

- 1. The limits of liability shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. **claims** made or **suits** brought;
  - b. persons or organizations making **claims** or bringing **suits**;
  - c. insureds;
  - d. **pollution incidents**; or
  - e. **crisis management events**.

## 2. Related or Continuous Pollution Incidents

All of the same, related or continuous **pollution incident(s)**, will be treated as one **pollution incident**, and subject to one Each Incident Limit and one deductible as described in paragraphs 3. and 8. below, respectively.

## 3. Each Incident Limit

Subject to paragraphs 4. and 5. below, the Each Incident Limit shown in Item 3. of the Declarations is the most we will pay under this policy for all **loss** arising out of any one **pollution incident**.

## 4. Coverage Section Aggregate Limit

Subject to paragraph 5. below, the Coverage Section Aggregate Limit shown in Item 3. of the Declarations is the most we will pay for all **loss** under the applicable coverage section.

## 5. Policy Aggregate Limit

The Policy Aggregate Limit shown in Item 3. of the Declarations is the most we will pay for all **loss** covered under this policy.

## 6. Environmental Crisis Management Limit

Subject to paragraphs 3., 4., and 5. above, the Environmental Crisis Management Limit set forth in Item 3. of the Declarations is the most we will pay under this policy for all **crisis management events** covered under this policy. Any series of related **crisis management events** arising out of any same, related, or continuous **pollution incident**, will be treated as a single **crisis management event**.

## 7. Multiple Coverage Sections

Subject to paragraph 3. above, only the highest applicable Each Incident Limit set forth in Item 3. of the Declarations, and the deductible corresponding to such coverage section, shall apply to the sum of all **loss** under all coverages arising out of any one **pollution incident** or the same related or continuous **pollution incident**.

## 8. Deductible

The limits of this insurance apply in excess of the applicable deductible shown in Item 3. of the Declarations. The deductible applies to all **loss** arising out of any one **pollution incident** or the same, related or continuous **pollution incident**. **Crisis management fees** are not subject to any deductible.

If, in the defense of a **suit** or settlement of a **claim** or **suit** or in the payment of **loss** we pay any part or all of the deductible, then upon our notification to you of such action taken, you shall promptly reimburse us the deductible amount that has been paid by us.

## 9. Policy Term

The limits of liability of this policy apply to the entire **policy period**. If the **policy period** is extended after issuance for an additional period, the additional period will be deemed part of the last preceding period for purposes of determining the limits of liability.

## SECTION IV. CONDITIONS

### 1. Appeals

At our discretion we may appeal any judgment which would result in a payment under this policy. When we do appeal, we will pay all costs associated with the appeal in addition to the limits of liability. Any such appeal will not increase our limits of liability.

### 2. Application and Representations

By accepting this policy, you understand and agree that the statements in the application, including any supporting documentation or information submitted in connection with the application for this insurance, are made a part of this policy; are accurate and complete; that those statements are material representations you have made to us; and that we have issued this policy in reliance upon your representations.

### 3. Assignment

The interest of any insured under this policy is not assignable, unless and until our consent to such assignment is endorsed hereon.

### 4. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

### 5. Cancellation

a. The **first named insured** may cancel this policy at any time by surrender of the policy to us, or by providing us advanced written notice of the cancellation date.

b. We may cancel this policy by providing the **first named insured** written notice of cancellation:

(1) at least 10 days in advance if we cancel for non-payment of premium; or

(2) at least 90 days in advance, but cancellation by **us** is limited to the following reasons:

(a) fraud or material misrepresentation on the part of an insured; or

(b) a change in your business activities, **your work** or operations at any **insured site** that materially increases our risk under this policy.

c. We will mail or deliver our notice to the **first named insured's** last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

d. Notice of cancellation will state the effective date of cancellation. The **policy period** will end on that date.

e. If this policy is cancelled, we will send the **first named insured** any return premium, if any, will be calculated per SECTION IV. CONDITIONS, paragraph 17. Premium. The cancellation will be effective even if we have not made or offered a refund.

### 6. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or estop us from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance and signed by us.

## 7. Currency

Any payment or reimbursement we make under this policy will be made in U.S. currency at the prevailing exchange rate on the date the judgment is rendered, or the date the amount of the settlement is agreed upon, or the date any other reimbursable expenditure is made by the insured.

## 8. Duties of the First Named Insured

The **first named insured** is responsible for payment of the policy premium and for any policy deductible. The **first named insured** will also serve as the sole agent acting on behalf of all insureds with respect to receipt of notice under this policy, including notice of cancellation or non-renewal, receipt and acceptance of any endorsement or any other change to this policy, or return of any premium, unless any such responsibilities are otherwise designated by endorsement.

## 9. Economic and Trade Sanctions

We shall not be deemed to provide cover and we shall not be liable to pay any **claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose us to any sanction, prohibition or restriction under the trade or economic sanctions, laws or regulations of the United States of America.

The United States of America trade or economic sanctions, laws or regulations shall include, but not be limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC).

## 10. Enforceability

If any part or provision of this policy is deemed invalid or unenforceable, it shall not affect the validity or enforceability of any other part or provision of this policy, which shall be enforced to the fullest extent permitted by law.

## 11. Entire Agreement

By acceptance of this policy, you agree with us that this policy and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this policy can be waived or changed only by written endorsement issued and signed by us.

## 12. Headings

Headings or sub-headings that appear in this policy are intended for convenience only and do not form a part of the terms, conditions or substance of the policy.

## 13. Independent Counsel

In the event that an insured is entitled by law to select, at our expense, independent counsel ("Cumis Counsel") to oversee our defense of a **suit** against the insured, the attorney's fees and all other litigation expenses we will pay to the independent counsel are limited to the rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar **suits** in the community where the **suit** is being defended. Any insured may, at any time, by signed consent, waive their right to select an independent counsel.

Additionally, we may exercise the right to require that such counsel have certain minimum qualifications with respect to their legal competency including, but not limited to, experience in defending **suits** similar to the one pending against any insured and to require such counsel to have errors and omissions insurance coverage. The insured agrees that such counsel will respond to our request for information regarding the **suit** in a timely manner.

#### 14. Inspection and Audit

By acceptance of this policy, you agree that we have the right, but not the obligation, to inspect or monitor on a continuing basis the operations or activities of your business which may give rise to any **claim** or **loss** under this policy. If we decide to exercise this right, we will inspect or monitor your operations or activities at a reasonable time of business. We will provide you or your broker or agent with reasonable notice as to the time and place of our inspection or monitoring, and we will seek your assistance with providing access to any locations, operations, books and records we intend to inspect or monitor.

We may, subject to our sole discretion, report orally or in writing to you on the conditions we find and recommend changes. Any such reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections, nor do we undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. Further, nothing in our inspection, monitoring or reports shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine whether any conditions are safe, or whether any operations or facilities are in compliance with laws, regulations, codes or standards.

#### 15. Legal Action Against Us

No person or organization has a right under this policy:

- a. to join us or **our affiliates** as a party or otherwise bring us or **our affiliates** into a legal **suit** or legal proceeding asking for damages from an insured; or
- b. to sue us or **our affiliates** on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### 16. Other Insurance

If other valid and collectible insurance applies to any **claim** or **loss** covered under this policy, this insurance will apply in excess of such other valid and collectible insurance, whether primary, excess, contingent or on any other basis, unless such other insurance is written only as specific excess insurance over the limit of liability of this policy.

When both this insurance and other insurance apply to any **claim** or **loss** on the same basis, then we will not be liable under this policy for a greater proportion of the **loss** than the lower of either (1) the limits of liability shown in the Declarations or (2) the amount determined by contribution amongst the policies, as follows:

- a. Contribution by Equal Shares - if all of the other insurance permits contribution by equal shares, we will also follow this method. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first; or
- b. Contribution by Limits - if any other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 17. Premium

The premium shown in Item 5. of the Declarations is the premium for the coverage we provide for the policy period. If this policy is cancelled prior to its expiration date return premium will be calculated as follows:

a. if cancelled by us:

$\{((\text{Premium}) - (\text{Minimum Earned Premium in Item 5. of the Declarations})) \times (\text{Pro Rata factor})\}$

b. if cancelled by the **first named insured**:

$\{((\text{Premium}) - (\text{Minimum Earned Premium in Item 5. of the Declarations})) \times \{(\text{Pro Rata factor}) \times (0.90)\}\}$ .

## 18. Right to Select Environmental Professionals

You, with our prior written consent and approval, have the right and duty to designate and retain qualified **environmental professionals** to assist with the investigation or remediation of a **pollution incident** to which this policy applies. Our written consent is not required in the case of **emergency response costs**, however, you are still required to select a qualified **environmental professional** to conduct any investigation or remediation on your behalf, and the rates and fees we actually pay to the **environmental professional** for their services will be limited to the rates and fees we typically pay in the ordinary course of business in investigating and remediating similar **pollution incidents** in the community where the **pollution incident** giving rise to **loss** hereunder arose. Any costs or **loss** incurred by you prior to receiving our written consent and approval will not be covered under this policy or credited against the deductible, except in the case of **emergency response costs**.

## 19. Right to Select Legal Counsel

We have the right to select legal counsel to defend the insured against any **claim** for **bodily injury, property damage, environmental damage**, or any other **loss** to which this insurance applies. Where allowable by law, we may appoint one counsel to represent or defend all insureds against any **claim** to which this insurance applies on a joint defense basis.

## 20. Separately Insured Project (Anti-Stacking of Limits)

In the event that any **claim** or **loss** covered under this policy is also covered under one or more other pollution liability policies issued by us or **our affiliate** to any **named insured** under a policy issued for a specific project or projects, including, but not limited to, any owner or contractor controlled insurance program(s), owner's protective policy, wrap-up policy or similar insurance, then with respect to any such **claim** or **loss**, our obligations are limited as follows:

- a. we shall not be liable under this policy for a greater portion of the **loss** than the applicable limit of liability, less the deductible or retention amount (if any), that this policy bears to the total applicable limits of liability of all such policies referred to above;
- b. the maximum amount payable under all such policies referred to above shall not exceed the largest single applicable limit of liability under any such policies. With respect to any such **claim** or **loss**, the limits of liability under this policy may be reduced or exhausted by payments under this policy and/or payments under all such policies; and
- c. the sole applicable deductible or retention shall be that which applies under the policy with the largest single limit of liability as established in paragraph b. immediately above.

## 21. Separation of Insureds / Severability

Except with respect to the limits of liability, any insured versus insured exclusion, cancellation, or any rights or duties specifically assigned to the **first named insured**, this insurance applies:

- a. as if each **named insured** was the only **named insured**; and
- b. separately to each insured against whom a **claim** is made.



## 22. Service of Suit

It is understood and agreed that in the event of a failure by us to pay any amount claimed to be due hereunder, we, at the request of the **first named insured**, will submit to a court of competent jurisdiction within the United States of America. The foregoing shall not constitute a waiver of any of our rights to remove, remand, or transfer such **suit** to any other court of competent jurisdiction in accordance with the applicable statutes of the United States of America or any state therein. In any **suit** instituted against us upon this contract, we will abide by the final decision of the court or of any appellate court in the event of an appeal.

It is further agreed that service of process upon us in such **suit** may be made upon the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose in the applicable statute governing service of process in the state or jurisdiction in which a cause of action arises under this contract of insurance, or his successor or successors in office as their true and lawful attorney upon whom may be served any lawful process in any action, **suit**, or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance.

## 23. Subrogation

In the event of any payment under this insurance by us, we shall be subrogated to all the insured's rights of recovery against any person or organization. No insured shall do anything after the payment of **loss** by us to prejudice such rights. The insured agrees to cooperate with us and to execute and deliver all instruments and papers and do whatever else is necessary to enforce such rights. At our request, the insured will bring **suit** or transfer those rights to us and help us enforce them.

With respect to Coverage 1.A. Operations Pollution Liability, we agree to waive our right of subrogation against any of your clients but only if and to the extent you had a written contract with your client agreeing to waive such rights prior to the **pollution incident** giving rise to **loss** hereunder began.

## 24. Transfer of Defense Duties

If we conclude that any applicable limit of liability of this policy has been, or soon will be, exhausted by the payment of **loss**, we will so notify the **first named insured** in writing as soon as possible. In the event that there are ongoing legal proceedings with respect to any **claims** against an insured, and any applicable limit of liability of this policy has been exhausted by the payment of **loss**, we will advise you that our duty to defend has ended and that we will no longer handle the defense of any ongoing **claims** or new **claims** against an insured. Thereafter, we will initiate and cooperate in the transfer of control of the defense of all **claims** to any appropriate insured. The exhaustion of any applicable limit of liability by the payment of **loss** will not be affected by our failure to comply with any of the provisions of this section, nor will we be obligated by operation of any rights or duties in this paragraph to defend or continue to defend any **claim** or pay any **loss** after any applicable limit of liability of this policy is exhausted.

## 25. Voluntary Payments / Consent

Other than **emergency response costs** or **crisis management events**, no insured shall, except at its own cost:

- a. voluntarily make any payment, assume any obligation, or incur any expense to which this policy applies without our prior written consent; or
- b. admit liability, offer to settle, or agree to any settlement in connection with any **claim** or **suit** without our prior written consent. When our written consent to a settlement is requested, you must promptly provide us with all information and particulars we may reasonably request, including, but not limited to, information which an insured may deem immaterial, in order to reach an informed decision as to such consent. Any **loss** or other costs, charges or expenses resulting from any admission of liability or agreement to settle incurred prior to our consent shall not be covered hereunder.

## 26. When We Do Not Renew

If we decide not to renew this policy, we will mail or deliver to the **first named insured** written notice of the nonrenewal not less than ninety (90) days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V. RIGHTS AND DUTIES OF INSURED AND US

### 1. Claim Reporting

As a condition precedent to coverage under the policy, if an insured receives a **claim** or becomes aware of a **pollution incident** or **crisis management event** which may give rise to **loss** under this policy, the insured must notify us as soon as practicable utilizing any of the following methods:

- a. electronic mail to our San Francisco Claims Office at [SFCLAIMS@navg.com](mailto:SFCLAIMS@navg.com); or
- b. mail to our Schaumburg Claims Office at

Navigators Insurance  
Attn: Environmental Claims Division  
1375 East Woodfield Road  
Suite 720  
Schaumburg, IL 60173  
United States of America

Notice to us should contain the following information:

- a. The current contact information of the person giving notice to us;
- b. The time, date and location of the **pollution incident** or **crisis management event**;
- c. A description of the circumstances giving rise to the **pollution incident** or **crisis management event** including how and when you became aware of the **pollution incident** or **crisis management event**;
- d. The names and addresses of any injured persons or witnesses; and
- e. All other information which is relevant to the **claim**, **pollution incident**, or **crisis management event**.

Thereafter, the insured is required to submit to us as soon as practicable, but in no event longer than sixty (60) days from the date of our request, any information related to the notice which we may reasonably request including but not limited to any relevant contracts, technical reports, laboratory data, field notes, or documents generated by an insured in the investigation of any potential **loss** hereunder, whether or not these materials are deemed by any insured to be relevant.

If a **claim** is made against any insured, you must immediately send us copies of any demands, notices, summonses or legal papers received in connection therewith.

If any insured reports any **claim** or **pollution incident** under this policy knowing such **claim** or **pollution incident** to be false or fraudulent, as regards to the amount or otherwise, this policy shall become null and void, and all coverage hereunder shall be forfeited.

### 2. Your Assistance and Cooperation

Any insured who may have any information related to a notice of a **claim** or **loss** submitted to us is required to cooperate with us in all investigations, securing and giving evidence, and, with respect to depositions, hearings, arbitrations, mediations, trials and any other legal proceedings, including personal attendance and the assistance in securing the attendance of witnesses.

### 3. Approval Process for Cleanup Costs

With respect to any **cleanup costs** to which this insurance applies, the insured must:

- a. submit, for our preapproval, all proposed work plans prior to submittal to any regulatory agency;
- b. submit, for our preapproval, all bids and contracts for **cleanup costs** prior to execution or issuance; and
- c. forward progress reports regarding **cleanup costs** to us at reasonable intervals and prior to any submittal to any regulatory agency that is authorized to review and approve such submittals.

We shall have the right, but not the duty, to assume direct control of such **cleanup costs**. Any **cleanup costs** incurred by us will be deemed to have been incurred by the insured and will reduce both the limits of liability and the deductible set out in the Declarations.

If we are prohibited under applicable law from investigating, defending or settling any such **claim** or **suit**, the insured shall, under our supervision, arrange for such investigation and defense thereof as is reasonably necessary, and subject to our prior authorization, shall effect such settlement thereof.

### 4. Your Duty and Our Right to Mitigate

Once you become aware of a **pollution incident**, you are required to make a reasonable attempt to mitigate any **loss** and to comply with all applicable laws. If, in our sole judgment, you or any insured fails to take reasonable steps to mitigate a **pollution incident** which may give rise to **loss** hereunder, we will have the right but not the duty to take such steps as we deem appropriate to mitigate the **pollution incident** or resulting **loss**. Any **loss** incurred by us will be deemed to have been incurred by the insured and will reduce both the limits of liability and the deductible set out in the Declarations.

## SECTION VI. EXTENDED REPORTING PERIOD

This Section VI. applies solely to Coverage B.2. Third Party Claims Caused by a Sudden Pollution Incident provided such coverage is purchased, and any other coverage that is added to this policy by endorsement and that applies to **claims** first made against an insured and reported to us during the **policy period**.

If this policy is:

- a. cancelled by us for any reason other than failure to pay a premium when due or fraud on the part of an insured;
- b. non-renewed by us; or
- c. cancelled by the **first named insured**; and

you have not purchased any other insurance to replace this insurance, then you are entitled to an extended reporting period as outlined in paragraphs VI.1. or VI.2. below. The quotation by us of a different premium, or deductible, or limit of liability, or changes in policy language for the purpose of renewal, shall not constitute our refusal to renew.

#### 1. Automatic Extended Reporting Period

An extended reporting period of ninety (90) days will be automatically provided to you for no additional premium. The Automatic Extended Reporting Period begins on the date the policy is terminated. A **claim** first made against an insured during the **policy period** or the Automatic Extended Reporting Period and reported to us during the Automatic Extended Reporting Period will be deemed to have been made against the insured and reported to us on the last day of the **policy period** provided the **claim** arises from a **pollution incident** that began prior to the end of the **policy period** and would otherwise be covered under this policy.

## 2. Supplemental Extended Reporting Period (Optional)

Within thirty 30 days following the date this policy is terminated as described above in this Section VI., the **first named insured** may elect, by notification to us in writing, to purchase a Supplemental Extended Reported Period for an additional premium of not more than 200% of the full policy premium. The available duration of the Supplemental Extended Reported Period will be up to a maximum of thirty-six (36) months.

The Supplemental Extended Reporting Period begins on the date the policy is terminated. A **claim** first made against an insured during the **policy period** or the Supplemental Extended Reporting Period and reported to us during the Supplemental Extended Reporting Period will be deemed to have been made against an insured and reported to us on the last day of the **policy period** provided the **claim** arises from a **pollution incident** that began prior to the end of the **policy period** and would otherwise be covered under this policy. If the Supplemental Extended Reporting Period is purchased, the Automatic Extended Reporting Period will merge into and not be in addition to the Supplemental Extended Reporting Period.

It is a condition precedent to your rights under this Section VI.2., that the **first named insured** make a written request to us to purchase the Supplemental Extended Reporting Period within 30 days following the date this policy is terminated, and that you pay in its entirety the additional premium when due. At the beginning of the Supplemental Extended Reporting Period the entire premium will be deemed fully earned, and, in the event that you terminate the Supplemental Extended Reporting Period for any reason prior to its natural expiration, we will not be liable to return any premium paid for the Supplemental Extended Reporting Period.

Any extended reporting period does not extend the **policy period** or change the scope of coverage provided, nor does it act to reinstate or increase any of the limits of liability.

## SECTION VII. DEFINITIONS

1. **Bodily injury** means the following sustained by any person:

- a. physical injury, sickness, disease, building-related illness or other illness; and
- b. mental anguish, emotional distress, or shock,

including, if applicable, death resulting therefrom, and medical monitoring when accompanied by physical injury.

2. **Cargo** means goods, products, supplies, merchandise or wastes.

3. **Claim** means a demand, **suit** or legal notice seeking a remedy and alleging liability or responsibility on the part of the insured.

4. **Cleanup costs** means those reasonable and necessary expenses, including **restoration costs**, incurred in order to investigate, test, monitor, abate, remove, remediate, neutralize, clean or dispose of soil, groundwater, surfacewater, or other contamination arising from a **pollution incident** to the extent:

- a. required pursuant to **environmental laws**;
- b. such expenses have been actually incurred by the government or any political subdivision of the United States of America or any state thereof, or Canada or any province thereof, or by third parties pursuant to **environmental laws**; or
- c. recommended in writing by an **environmental professional** as necessary for the protection of human health and the environment, but only in the absence of any applicable **environmental laws**.

**Cleanup costs** do not include:

- a. **property damage**;
- b. costs, charges or expenses incurred by you for materials supplied or services performed by the insured unless such costs, charges or expenses are incurred with our prior written approval;

- c. any unreasonable or unnecessary acceleration or delay in executing a remedial plan; or
- d. costs, charges or expense incurred to prevent future **pollution incidents**.

5. **Completed operations** means **your work** that has been completed, and does not include **your work** that has been abandoned by you. **Your work** will be deemed completed at the earliest of the following times:

- a. when all of **your work** called for in your contract has been completed;
- b. when all **your work** to be performed at a project location has been completed if your contract calls for work at more than one project location; or
- c. when that part of **your work** performed at the project location has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

**Your work** that may need service, maintenance, correction, repair or replacement, but which is otherwise complete as noted above, will be deemed completed and treated as **completed operations**.

6. **Coverage territory** means anywhere in the world, provided the insured's responsibility to pay **loss** is determined in a **suit** on the merits in the United States of America (including its territories and possessions), Puerto Rico and Canada, or is otherwise agreed to by us.

7. **Crisis management consultant** means a professional firm or consultant that provides crisis management services which has been approved in writing by us prior to any insured incurring **crisis managements fees** to which this policy applies, the approval for which shall not be unreasonably withheld, delayed, conditioned or denied.

8. **Crisis management event** means the public announcement or accusation by a third party that a **pollution incident** for which you are alleged to be legally responsible has caused:

- a. **bodily injury** involving multiple third parties; or
- b. **property damage**, but only to the extent resulting in actual physical damage, or **cleanup costs**, to real properties owned by multiple third parties,

provided that an **executive officer** has proffered a good faith opinion, in our sole discretion, that the public announcement or accusation has caused or is reasonably likely to cause economic harm to, or a material adverse effect on, your image or goodwill.

9. **Crisis management fees** means those reasonable and necessary fees and expenses:

- a. incurred by you within ninety (90) days after the **crisis management event** is discovered by you, or thereafter as approved by us in writing; and
- b. for services provided to you by a **crisis management consultant** for the sole purpose of assisting you with:
  - (1) managing the media in direct response to a **crisis management event**; or
  - (2) minimizing the economic harm to you caused by a **crisis management event** by consulting with you with respect to maintaining and restoring your public image or reputation.

10. **Emergency response costs** means those reasonable and necessary expenses incurred in order to investigate, test, monitor, abate, remove, remediate, neutralize, clean or dispose of soil, groundwater, surfacewater, or other contamination in response to a **pollution incident** that begins during the **policy period** and:

- a. presents an imminent and substantial danger to human health and the environment; and
- b. requires an immediate response by you in order to mitigate or reduce **loss** to which coverage under this policy applies or would apply but for the absence of a **claim** against you.

This policy applies to only those **emergency response costs** incurred by you within fifteen (15) calendar days after the **pollution incident** begins or incurred thereafter as pre-approved by us in writing. Further, you must report the **pollution incident** giving rise to such costs to us no later than thirty (30) calendar days after it began.

11. **Employee** means any persons actively employed by you, including a **leased worker** or **temporary worker**.
12. **Environmental damage** means physical damage to the atmosphere, biota, soil, land, any structure on land, groundwater or surfacewater caused by a **pollution incident** and giving rise to **cleanup costs**. **Environmental damage** does not include **property damage**.
13. **Environmental laws** means any federal, state, provincial, or local law, including, but not limited to, statutes, rules, ordinances, guidance documents, regulations, and all amendments thereto, including state voluntary cleanup or risk-based corrective action guidance, and governmental, judicial, or administrative orders or directives, applicable to a **pollution incident**.
14. **Environmental professional** means a person designated by us, or by you with our prior written consent and approval, who is certified or licensed as a Certified Industrial Hygienist (CIH) by the American Board of Industrial Hygiene, a Professional Engineer (P.E.), a Professional Geologist (P.G.) or other certified or licensed professional with the applicable State environmental regulatory agency. We may require that certain minimum professional criteria be met, including a demonstration that the individual has experience with similar projects as the one involving **cleanup costs** or **emergency response costs** covered under the policy, and the maintenance of adequate errors and omissions insurance.
15. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
16. **Extended reporting period** means the Automatic Extended Reporting Period or, if applicable, the Supplemental Extended Reporting Period, as described in Section VI. of this policy
17. **First named insured** means the first person or entity stated in Item 1. of the Declarations.
18. **Fungus** means any form of mold, mildew, or fungi, including mycotoxins, spores or byproducts produced or released by fungi.
19. **Green standards** means the following standards, products, methods, and processes for improving the environment, increasing energy efficiency, and enhancing safety and property protection:
  - a. LEED<sup>®</sup> Green Building Rating System<sup>™</sup> of the U.S. Green Building Council;
  - b. Green Globes<sup>™</sup> Assessment and Rating System;
  - c. ENERGY STAR<sup>®</sup>; or
  - d. National Fire Protection Association codes, Underwriter Laboratories standards, or other local or international codes.
20. **Inception date** means the first date set forth in Item 2. of the Declarations.
21. **Insured contract** means:
  - a. a sidetrack agreement;
  - b. any easement or license agreement;
  - c. your obligation, as required by ordinance, to indemnify a municipality, except in connection with **your work** for a municipality;
  - d. an elevator maintenance agreement;
  - e. that part of any other contract or agreement pertaining to **your work** or **transportation** (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for **bodily injury**, **property damage** or **environmental**

**damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or

- f. a written contract or agreement submitted to and approved by us, and listed on a Schedule of Insured Contracts endorsement attached to this policy.

22. **Insured site** means the locations identified in Item 4. of the Declarations.

23. **Leased worker** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.

24. **Loss** means:

a. with respect to **claims for bodily injury or property damage**:

- (1) monetary awards or settlements of compensatory damages;
- (2) civil fines, penalties, or assessments; and
- (3) where insurable by law, punitive, exemplary, or treble damages.

b. **cleanup costs** and **emergency response costs**;

c. **crisis management fees**; and

d. those reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured as provided for in Section I.4. Common Exclusions, paragraph a. Contractual Liability.

25. **Low level radioactive material** means radioactive material or waste, including any radioactive waste from nuclear medicine, medical imaging equipment or the use of radiopharmaceuticals, not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954 (as amended).

26. **Midnight dumping** means the illicit abandonment of drums or containers of **pollutants** regulated as hazardous or toxic under Federal, State, Provincial, or local environmental law, regulation or statute, but only if:

a. the drums or containers were abandoned by persons or entities other than you or your affiliates and without the knowledge of any **responsible insured**; and

b. the actual or threatened discharge, dispersal, release, seepage or escape of the contents of the drums or containers has resulted or could result in **cleanup costs** to which this policy applies.

27. **Motor vehicle** means:

a. a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

28. **Named insured** means the person(s) or entity(ies) listed in Item 1. of the Declarations and any other person or entity qualifying as a Named Insured under this policy.

29. **Natural resource damages** means injury to or destruction of land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including any resources that are the subject of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)); or any State, Provincial, or local government; or any foreign government; or any Indian Tribe; or, if such resources are subject to a trust restriction or alienation, by any member of an Indian tribe, including any reasonable costs of damage assessment and the cost of restoring injured resources to their baseline condition prior to the **pollution incident** giving rise to **loss** hereunder.



30. **Our affiliate** means any parent, subsidiary, affiliate, division, related companies, holding companies, merged companies, acquired companies, predecessors-in-interest and/or successors-in-interest of the company listed in the Declarations as providing this insurance.
31. **Policy period** means the period set forth in Item 2. of the Declarations, or if this policy is cancelled, any shorter period as a result of such cancellation.
32. **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, petroleum hydrocarbons, **low level radioactive materials**, electromagnetic fields, and hazardous waste materials, including medical and infectious wastes, and materials to be recycled, reconditioned or reclaimed. **Pollutant** also includes legionella pneumophila and **fungus**.
33. **Pollution incident** means:
- a. the discharge, dispersal, release, seepage or escape of any **pollutant** into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided the amount or concentration of the **pollutant** exceeds the amount or concentrations naturally present in the environment;
  - b. the existence of **fungus** or legionella pneumophila at, on, or within any man-made structures or buildings, including the indoor air within such structures or buildings;
  - c. solely with respect to **pollution incidents** caused by **your work** as defined in paragraphs a. and b. of SECTION VII. DEFINITIONS, paragraph 45. Your work:
    - (1) the discharge, dispersal, release, seepage or escape of silt or sedimentation beyond the legal boundaries of a location where you perform **your work**, if such discharge, dispersal, release, seepage or escape results in **environmental damage**; or
    - (2) any material exacerbation, expansion or migration of **pollutants** as a result of **your work**;
  - d. solely with respect to any **waste disposal facility**, the release or threatened release of any **pollutant** to the extent a governmental entity or third party seeks cost recovery or contribution from you pursuant to **environmental laws**; or
  - e. any **midnight dumping** at an **insured site** or third-party jobsite at which you perform **your work**.
34. **Property damage** means:
- a. physical injury to or destruction of tangible property, including any resulting loss of use;
  - b. loss of use of tangible property that has not been physically injured or destroyed;
  - c. diminution in value; or
  - d. **natural resource damages**.
- Property damage** does not include **cleanup costs** pursuant to **emergency response costs**, or **environmental damage**. Electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
35. **Responsible insured** means your owners, **executive officers**, directors, or partners; your managers or supervisors; your **employees** who are responsible for environmental affairs, control, or compliance; and your **employees** who are responsible for giving or receiving notice of a **claim**.
36. **Restoration costs** mean those reasonable and necessary expenses incurred by an insured with our written consent, to repair, replace, or restore real or personal property to substantially the same condition it was in prior to being damaged in the course of incurring **cleanup costs** or **emergency response costs**. Such expenses do not include any costs associated with any improvements or betterments, except as follows:

If a repair or replacement results in better than the like kind or quality, we will pay for the amount of the betterment but only if and to the extent that such betterment entails the use of materials meeting **green standards** which comprised the damaged property. In the absence of material meeting such **green standards**, then the cost for such materials shall be approved in advance in writing by us, and based on our judgment in our sole discretion.

37. **Suit** means a civil proceeding in which damages because of **bodily injury, property damage,** or **environmental damage** to which this policy applies are alleged. **Suit** includes:

- a. an arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our written consent; or
- b. any other alternative dispute resolution proceeding in which such damages is claimed and to which the insured submits with our written consent.

38. **Transportation** means the movement of **cargo** by you, or by a third-party carrier properly licensed to carry such **cargo**, using a **motor vehicle**, rolling stock, aircraft or water craft while in due course of transit from the point of origin until the point of final destination. **Transportation** includes the loading and unloading of **cargo**.

39. **Temporary worker** means a person who is furnished to you to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.

40. **Underground storage tank** means any stationary tank or vessel, including any attached pumps, valves and piping connected to the tank or vessel that has at least ten (10) percent of its volume belowground.

**Underground storage tank** does not include:

- a. septic tanks, sump pumps, or water-oil separators;
- b. storm-water or wastewater collection systems; or
- c. tanks that are enclosed within a basement or cellar if the entire tank is upon or above the surface of the floor.

41. **Volunteer worker** means a person who is not your **employee**, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

42. **Waste disposal facility** means a location to which waste is sent for treatment, storage, processing, recycling or disposal, provided the location is not and was never owned, operated or rented by you or your parent, subsidiary or affiliate, and the location at the time your waste was sent to it:

- a. was properly licensed, as applicable, by state, federal, municipal or provincial authority to conduct waste treatment, storage, processing, recycling or disposal; and
- b. was not listed, or proposed to be listed, on the U.S. Environmental Protection Agency's (EPA's) Final National Priorities List (NPL), or on the Superfund or Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database, or any state or provincial equivalents to the federal NPL, Superfund or CERCLIS databases.

43. **Wrongful delivery** means the delivery of liquid **cargo** into the wrong receptacle, or to the wrong address, or the mistaken delivery of one liquid **cargo** for another.

44. **Your product** means:

- a. any goods or products, other than real property, manufactured, sold, or distributed by:
  - (1) you;
  - (2) others trading under your name; or
  - (3) a person or organization whose business or assets you have acquired; and

- b. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**Your product** includes:

- a. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
- b. the providing of or failure to provide warnings or instructions.

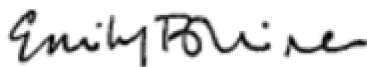
**45. Your work** means:

- a. work or operations performed by you or on your behalf;
- b. materials, parts or equipment furnished in connection with such work or operations noted in paragraph a. above;
- c. **transportation** and **wrongful delivery** during **transportation**; and
- d. your use of a **waste disposal facility**.

Solely with respect to paragraphs a. and b. above, **your work** includes:

- a. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**;
- b. the providing of or failure to provide warnings or instructions; and
- c. **completed operations**.

In Witness Whereof, the issuing Company has caused this policy to be signed officially below and countersigned on the Declarations page by a duly authorized representative of said Company, to the extent required by applicable law.



\_\_\_\_\_  
[Emily Miner]  
Secretary



\_\_\_\_\_  
[Vincent Tizzio]  
President

NCCI #: WC000313B  
Policy #: 4211969

Clarke & Co., Inc.  
3017 Hwy 50  
Grand Junction, CO 81503

Moody-Valley Insurance Agency, Inc.  
760 Horizon Drive  
#302  
Grand Junction, CO 81506-1509  
(970) 243-3421

**ENDORSEMENT: Blanket Waiver of Subrogation**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**SCHEDULE**

To any person or organization when agreed to under a written contract or agreement, as defined above and with the insured, which is in effect and executed prior to any loss.

Effective Date: September 1, 2024 Expires on: September 1, 2025  
Pinnacol Assurance has issued this endorsement September 3, 2024