

# **Consent Agenda**

**April 27, 2021**

MET IN REGULAR SESSION

The Board of Supervisors met in regular session at 10:00 A.M. All members present. Chairman Belt presiding.

**1. CONSENT AGENDA**

After discussion was held by the Board, a Motion was made by Shea, and second by Schultz, to approve:

- A. April 20, 2021, Minutes as read.
- B. Planning – Employment of Alex McGee as Environmental Health Inspector
- C. Jail – Employment of Kayla Werneberg as Detention Officer

UNANIMOUS VOTE. Motion Carried.

**2. SCHEDULED SESSIONS**

Motion made by Shea, second by Wichman, to open Public Hearing on the plans, specifications, form of contract and estimated total cost of construction for the Combined Contract for the Pottawattamie County Sheriff's Office Expansion project.

**Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea**

Motion made by Shea, second by Grobe, to close Public Hearing.

**Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea**

Paula Hazelwood, Executive Director and Shalimar Mazetis, Manager Entrepreneurial Development from Advance Southwest Iowa Corporation appeared before the Board to discuss the County's partnership with Advance Southwest Iowa Corporation. Discussion only. No action taken.

Michael Williams and Jim Garbina from The Harry A. Koch Company and Human Resources Director Jana Lemrick appeared before the Board to discuss and provide an update on FY 21/22 employee health and dental insurance.

Motion by Wichman, second by Schultz to set aside agenda. UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Schultz to approve Employee Dental Plan with Reliance Standard in the amount of \$350,396.64, to approve Employee Vision Plan with Reliance Standard VSP in the amount of \$43,907.04, and to approve employee health plan with IGHCP for FY 21/22. UNANIMOUS VOTE. Motion Carried.

Planning and Development Director Matt Wyant appeared before the Board to provide an update on Phase 2 of Pottawattamie County Public Health Vaccination Effort. Discussion only. No action taken.

Motion by Schultz, second by Shea, to approve purchase of 2020 Ford Transit Van for Mobile Vaccination Efforts. UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Schultz, to approve and authorize Chairman to sign Final Design Services Agreement with HGM for the Roads Operational Center. UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Schultz, to declare bid the from Mecco-Henne Contracting of \$5,525,000 as the lowest responsive bid and to award Courthouse Addition Project to Mecco-Henne Contracting with contract signing date to be set for May 4, 2021. UNANIMOUS VOTE. Motion Carried.

**3. OTHER BUSINESS**

Motion by Shea, second by Schultz, to approve and authorize Board to sign Resolution No. 19-2021 entitled: County of Pottawattamie Resolution to Adopt the National Incident Management System (NIMS) and Pottawattamie County NIMS Implementation Plan.

**RESOLUTION NO. 19-2021**

**COUNTY OF POTTAWATTAMIE RESOLUTION TO ADOPT THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AND POTTAWATTAMIE COUNTY NIMS IMPLEMENTATION PLAN.**

**WHEREAS**, emergencies, domestic incidents, and disasters transcend jurisdictional boundaries, making intergovernmental coordination essential in successful emergency response and recovery efforts; and

**WHEREAS**, Homeland Security Presidential Directive 5 (SHPD-5), Management of Domestic Incidents, requires all Federal departments and agencies to adopt NIMS and use it in their domestic incident management and emergency prevention, preparedness, response, recovery, and mitigation activities; and

**WHEREAS**, the HSPD-5 required Federal departments and agencies to make the adoption and institutionalization of NIMS by State, Local, Tribal, and Territorial organizations as a condition for Federal preparedness assistance; and

**WHEREAS**, the NIMS doctrine for incident management applies to all levels of government and all response agencies in each jurisdiction; and

**WHEREAS**, the Pottawattamie County Emergency Management Agency has developed for use the Pottawattamie County NIMS Implementation Plan and under authority of Iowa Code §29C, the Pottawattamie County Emergency Management Commission has adopted said plan for execution; and

**WHEREAS**, the Board of Supervisors of Pottawattamie County deems is advisable and with best interest to adopt said plan;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVORS OF POTTAWATTAMIE COUNTY** that the U.S. Department of Homeland Security, Federal Emergency Management Agency’s National Incident Management System (NIMS) doctrine and Pottawattamie County National Incident Management System (NIMS) Implementation Plan be approved and adopted this day, and furthermore directs all subordinate agencies and departments within the jurisdiction to implement the provisions of said plan in coordination with the Pottawattamie County Emergency Management Agency.

**PASSED and APPROVED this 27<sup>th</sup> day of April, 2021**

**ROLL CALL VOTE**

	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Tim Wichman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Lynn Grobe	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Justin Schultz	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Brian Shea	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ATTEST: \_\_\_\_\_  
Melvyn Houser, County Auditor

Roll Call Vote: **AYES: Belt, Wichman, Grobe, Schultz, Shea**

**4. RECEIVED/FILED**

**A. Salary Actions**

- 1) Communications – Payroll Status Change for Joshua Derrington, Kena Wood

- 2) Jail – Payroll Status Change for Corey Little, Ryan Thompson, Samantha Stone
  - 3) WIC – Payroll Status Change for Luz Collins
  - 4) Juvenile Detention – Employment of Makenzie Ayers as Part-Time Youth Corrections Worker
- B. Reports
    - 1) Sheriff’s Report of Fees Collected and Disbursed for March 2021
  - C. Out of State Travel
    - 1) Sheriff - Out of State Travel Notification

## 5. CLOSED SESSION

Motion by Wichman, second by Schultz, to go into Closed Session pursuant to Iowa Code 20.17(3), for discussion and/or decision on labor negotiations / collective bargaining matters.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea

Motion by Wichman, second by Shea, to go out of Closed Session.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea

## 6. ADJOURN

Motion by Shea, second by Grobe, to adjourn meeting.

UNANIMOUS VOTE. Motion Carried.

THE BOARD ADJOURNED SUBJECT TO CALL AT 12:26 P.M.

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Scott A. Belt, Chairman

ATTEST:

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Melvyn Houser, Pottawattamie County Auditor

APPROVED: May 4, 2021

PUBLISH: X



I, Melvyn Houser, Auditor of Pottawattamie County, verify the following to be a correct copy of all claims allowed by the Pottawattamie County Board of Supervisors for the month of April 2021.

Vendor Name	Payable Description	Total Payments
911 CUSTOM LLC	SUPPLIES - SHERIFF	56.00
A AND L HYDRAULICS INC	ROADS/REPAIR	481.03
AAR ROOFING LLC	PROF SVC - B&G	400.00
ABBIE ASHCRAFT	REIMB EXP - SWIA MHDS REGION	25.98
ABC ELECTRIC INC	PROF SVC - NON DEPARTMENTAL	6,007.84
ABLE LOCKSMITHS	PROF SVC - B&G	157.50
ACCURATE CONTROL INC	PROF SVC - NON DEPARTMENTAL	13,299.28
ADAM FIELDS	REIMB EXP - SHERIFF	85.58
ADAM KLEIN	REIMB EXP - IT	21.00
ADVANCE SOUTHWEST IOWA CORPORATION	PROF SVC - BOARD	45,000.00
AGRILAND FS INC	FUEL - CONSERVATION	1,383.06
AGRIVISION GROUP, LLC	SUPPLIES - B&G	986.39
AHLERS & COONEY PC	LEGAL SVCS - BOARD	463.00
AIRGAS INC	ROADS/SUPPLIES	626.55
ALBERTSON BROTHERS GLASS LLC	ROADS/REPAIR - 326	2,080.15
ALEGENT CREIGHTON CLINIC	MED SVCS - JAIL	33.60
ALEGENT CREIGHTON HEALTH	MED SVCS - JAIL	2,344.00
ALEGENT HEALTH BERGAN MERCY HEALTH SYSTEM	MED SVCS - JAIL	264.31
ALL MAKES OFFICE EQUIPMENT CO	SUPPLIES - B&G	23.63
AM COHRON & SON INC	ROADS/VOUCHER 3	401,798.25
AMAZON CAPITAL SERVICES INC	SUPPLIES - DHS	281.15
AMERICAN JAIL ASSOCIATION	MEMBERSHIP - JAIL	60.00
AMERICAN NATIONAL BANK	MO BILL - SHERIFF	15,643.09
AMY JOBE	REIMB EXP - SWIA MHDS REGION	127.68
ANDREA C FREENY CSR CRR	TRANSCRIPTS - CO ATTORNEY	28.50
ANDREW OBERDORFER	MEETINGS - BOARD	80.00
ANTHONY KAVA	REIMB EXP - SHERIFF	390.38
ARNOLD MOTOR SUPPLY	ROADS/PARTS - 437	446.66
ARROW TOWING INC	PROF SVC - SHERIFF	85.00
ASP ENTERPRISES INC	ROADS/SUPPLIES	2,781.43
ASPEN EQUIPMENT CO	ROADS/EQUIPMENT	30,314.00
AXON ENTERPRISE INC	EQUIP - JAIL	24,797.67
B&R STORES INC	SUPPLIES - SWI JUV	40.04
BAKER MECHANICAL INC	PROF SVC - SHERIFF	762.50
BARB CHENEY	REIMB EXP - SWIA MHDS REGION	137.76
BAUER BUILT INC	PROF SVC - SHERIFF	231.40
BIDDLE CONSULTING GROUP INC	PROF SVC - COMMUNICATIONS	2,595.00
BIG RED CONCRETE PUMPING INC	ROADS/MATERIALS	2,443.20
BILLS WATER CONDITIONING INC	MO BILL - JAIL	676.29
BISHOP BUSINESS EQUIPMENT COMPANY	PROF SVC - PUBLIC HEALTH	651.96
BLACK HILLS ENERGY	MO BILL - JAIL	5,899.60
BLU MOVING	PROF SVC - NON DEPARTMENTAL	4,900.00
BLUFFS ELECTRIC INC	PROF SVC - NON DEPARTMENTAL	3,233.00
BLUFFS PAVING & UTILITY COMPANY INC	ROADS/VOUCHER 1	2,028.08
BOB BARKER COMPANY INC	SUPPLIES - JAIL	1,092.00
BOLTON & MENK INC	DRAINAGE - 2019 FLOOD - VANMAN - PROF SVCS	23,258.00
BOMGAARS SUPPLY INC	ROADS/SUPPLIES	1,884.09
BOO INC	ROADS/PARTS - 514	654.26
BOOT BARN HOLDINGS	ROADS/PPE	135.96
BP ENTERPRISES	PROF SVC - SHERIFF	836.37
BRANDON RAMSEY	REIMB EXP - SHERIFF	420.31
BREDA TELEPHONE CORPORATION	MO BILL - COMMUNICATIONS	734.00
BRIAN ADKINS	SUPPLIES - SHERIFF	856.00
BRIAN MCMILLIN	PROF SVC - AUDITOR	2,300.00
BUSINESS CLEANING SOLUTIONS INC	MO BILL - CONSERVATION	517.00
C & J INDUSTRIAL SUPPLY INC	ROADS/UTILITIES - UNDERWOOD	86.50
CALHOUN COMMUNICATIONS INC	PROF SVC - COMMUNICATIONS	5,651.85
CARROLL DISTRIBUTING & CONSTRUCTION SUPPLY INC	ROADS/SUPPLIES	103.96
CARTER LAKE PUBLIC LIBRARY	CONTRIBUTION - BOARD	1,123.50
CASINO CAB CO LLC	TRANSPORT - JAIL	77.00
CASS COUNTY (IA)	TRANSPORT - SWIA MHDS REGION	281.50
CDW LLC	SUPPLIES - COMMUNICATIONS	2,415.51
CELLCO PARTNERSHIP	MO BILL - SHERIFF	14,106.49
CEN PRO	PROF SVC - CONSERVATION	45.00
CENTRAL IOWA READY MIX	ROADS/MATERIALS	10,268.00
CENTURYLINK INC	MO BILL - COMMUNICATIONS	9,133.64
CHAMPLIN TIRE RECYCLING INC	PROF SVC - ENV HEALTH	1,733.94
CHASITY CHRISTIE	MED SVCS - SWI JUV	55.00
CHERI DAHLHEIM	REIMB EXP - MED EXAMINER	337.52
CHRISTIAN HOME ASSOCIATION	PROF SVC - DHS	3,463.68
CHRISTINE RETHMEIER	REIMB EXP - COMMUNICATIONS	6.72
CHRISTOPHER JON ELLIOTT	MED SVCS - MED EXAMINER	13,333.34
CHS INC	FUEL - EMA	122.34
CINTAS CORPORATION NO 2	ROADS/SUPPLIES	505.38
CIT BANK NA	PROF SVC - EMA	179.57
CITIBANK NA	SUPPLIES - DHS	429.39
CITY OF AVOCA	CONTRIBUTION - BOARD	18,561.00
CITY OF AVOCA	ROADS/UTILITIES	62.82
CITY OF CARSON	PROF SVC - BOARD	3,640.68
CITY OF COUNCIL BLUFFS	CONTRIBUTION - BOARD	125,319.22
CITY OF COUNCIL BLUFFS	PROF SVC - PUBLIC HEALTH	26,225.13
CITY OF HANCOCK	MO BILL - CONSERVATION	277.16
CITY OF INDIANOLA	PD CONTRACT REIMB - SHERIFF	5,468.62
CITY OF MACEDONIA	CITIES PROGRAM - BOARD	16,205.80
CITY OF NEOLA	CITIES PROGRAM - BOARD	175,000.00
CITY OF OAKLAND	COVID REIMB - PUBLIC HEALTH	3,370.38
CITY OF TREYNOR	CITIES PROGRAM - BOARD	80,000.00
CITY OF WALNUT	CONTRIBUTION - BOARD	3,734.48
CLAYS PUMP AND EQUIPMENT	ROADS/SUPPLIES	69.25
COMMERCIAL FARM INDUSTRIAL TIRE SERVICE INC	ROADS/TIRE REPAIR	247.00

CONNER PSYCHOLOGICAL SERVICES		
CONSERVATION CORPS	MED SVCS - JAIL	1,925.00
CORNHUSKER INTERNATIONAL TRUCKS INC	PROF SVC - CONSERVATION	2,230.03
CORPORATE TRANSLATION SERVICES INC	ROADS/PARTS	14.79
COUNCIL BLUFFS CHAMBER OF COMMERCE	PROF SVC - PUBLIC HEALTH	4.16
COUNCIL BLUFFS WATER WORKS	DUES - CONSERVATION	335.00
COUNTRY CARE CENTER CORP	MO BILL - JAIL	4,035.86
COX COMMUNICATIONS	RCF - SWIA MHDS REGION	88,363.20
CREDIT BUREAU OF COUNCIL BLUFFS INC	MO BILL - IT	8,282.27
CROSSROADS OF WESTERN IOWA	PROF SVC - SHERIFF	46.00
CRYSTAL CLEAR WATER INC	RENT ASSIST - GA	400.00
CUMMINS INC	MO BILL - RECORDER	42.75
D M G INC	ROADS/PARTS	285.63
DANIEL TEMEYER	SUPPLIES - JAIL	1,003.33
DAVES PLACE LLC	REIMB EXP - SHERIFF	297.12
DAVID K LYON	MED SVCS - SWIA MHDS REGION	8,400.00
DE LAGE LANDEN FINANCIAL SERVICES INC	ROADS/SERVICE - 385	340.00
DEK CORP	PROF SVC - AUDITOR	630.21
DELL MARKETING LP	PROF SVC - JAIL	1,440.50
DIAMOND OIL COMPANY	EQUIP - SWIA MHDS REGION	924.54
DICENZO PAINTING & CARPET CLEANING	FUEL - CONSERVATION	1,137.96
DLR GROUP INC	PROF SVC - NON DEPARTMENTAL	5,153.27
DONALD NIELSON	PROF SVC - SHERIFF	1,339.00
DONALD NIELSON	PUBLICATIONS - BOARD	1,848.01
DONALD W MATHEWS	PUBLICATIONS - BOARD	1,869.26
DOUGLAS COUNTY (NE)	PROF SVC - SHERIFF	5,164.95
DUSTIN AUDEMORE	PROF SVC - COMMUNICATIONS	9,791.91
DUSTIN PEREGRINE	ROADS/REIMB	9.35
DXP ENTERPRISES INC	REIMB EXP - IT	75.04
EAST POTT SWCD	SUPPLIES - JAIL	13.64
EBS c/o AMERICAN NATIONAL BANK	REIMB EXP - EAST POTT SWCD	194.52
ECHO GROUP INC	EBS RETIREES - JAIL	5,930.18
ECKLES MEMORIAL LIBRARY	SUPPLIES - NON DEPARTMENTAL	7,027.35
ECOLAB INC	CONTRIBUTION - BOARD	7,997.00
ELIOR INC	SUPPLIES - JAIL	2,770.00
ELLEN WAY	SUPPLIES - JAIL	48,379.14
EMILY HUGEN	MEETING - VA	153.70
ERIC SHEA	REIMB EXP - EAST POTT SWCD	790.92
EROSION CONTROL PRODUCTS CORPORATION	REIMB EXP - SHERIFF	700.00
EVIZZIT LLC	ROADS/PARTS	544.62
F & V OSBORN FARMS INC	MH SVCS - SWIA MHDS REGION	290.00
FARM SERVICE COOPERATIVE	WELL CLOSURE - PLANNING	500.00
FARMERS MUTUAL COOPERATIVE TELEPHONE	ROADS/FUEL	64,523.88
FASTENAL COMPANY	MO BILL - CONSERVATION	519.46
FEDERAL SIGNAL CORPORATION	SUPPLIES - JAIL	397.86
FERGUSON US HOLDINGS INC	PROF SVC - COMMUNICATIONS	3,250.00
FIFTY THIRTEEN CORP	SUPPLIES - JAIL	65.21
FIREGUARD INC	ROADS/SERVICES - HANCOCK	5,549.20
FIRESPRING PRINT INC	PROF SVC - NON DEPARTMENTAL	645.10
FIRST NATIONAL BANK OF OMAHA	PROF SVC - PUBLIC HEALTH	2,149.35
FIRST WIRELESS INC	ROADS/MULT ACCOUNTS	3,875.40
FLORENCE CRITTENTON HOME OF SIOUX CITY	PROF SVC - COMMUNICATIONS	6,792.91
FMTC SWT INC	PROF SVC - DHS	5,038.20
FORGED DEVELOPMENT LLC	ROADS/UTILITIES	131.20
FOX CREEK FUNDRAISING LLC	PROF SVC - PUBLIC HEALTH	15,000.00
FRONTIER COMMUNICATIONS OF IOWA LLC	PROF SVC - PUBLIC HEALTH	3,722.50
GALLS LLC	MO BILL - COMMUNICATIONS	491.39
GARREANS LAW LLC	SUPPLIES - SWI JUV	69.98
GARY FORRISTALL	LEGAL SVCS - BOARD	2,814.00
GAWLEY TIRE & REPAIR INC	MEETING - BOARD	20.00
GENERAL FIRE AND SAFETY EQUIPMENT CO OF OMAHA	ROADS/TIRES - 390	80.00
GENERAL PARTS LLC	PROF SVC - JAIL	135.00
GENIE SERVICES	PROF SVC - JAIL	2,516.64
GISG LLC	PROF SVC - PUBLIC HEALTH	45.00
GOVCONNECTION INC	ROADS/SERVICES - UNDERWOOD	465.00
GRAHAM TIRE CO OF LINCOLN LLC	SUPPLIES - IT	4,732.88
GREAT AMERICA FINANCIAL SERVICES CORPORATION	PROF SVC - SHERIFF	572.00
GREAT PLAINS PEST SERVICES INC	PROF SVC - RECORDER	319.78
GREAT PLAINS UNIFORMS	PROF SVC - B&G	296.00
GREEN HILLS AEA	PROF SVC - SHERIFF	2,513.43
GREG MATHIS	SUPPLIES - EMA	2,880.00
GREGORY L DAVIS DDS	PROF SVC - WEST POTT SWCD	90.00
GRISWOLD COOPERATIVE TELEPHONE CO	MED SVCS - JAIL	1,800.00
GRP & ASSOCIATES INC	ROADS/UTILITIES	36.56
GUYER MACHINE SHOP INC	PROF SVC - PUBLIC HEALTH	7,262.00
HADLEY MIKOVEC	PROF SVC - SHERIFF	1,801.62
HAMELE GROUP INC	REIMB EXP - SHERIFF	88.88
HANEY SHOE STORE INC	ROADS/SUPPLIES	51.64
HARRISON COUNTY RURAL ELECTRIC COOPERATIVE	ROADS/PPE	237.75
HARRY H WALLAR VIII	MO BILL - COMMUNICATIONS	553.53
HAWKEYE TRUCK EQUIPMENT CO INC	PROF SVC - PUBLIC HEALTH	300.00
HAYES & ASSOCIATES LLC CPAS	ROADS/PARTS	583.23
HEARTLAND COOP	PROF SVC - SWI JUV	3,250.00
HEARTLAND FAMILY SERVICE	FUEL - SHERIFF	1,075.43
HEARTLAND MANAGEMENT DIVISION	ACT - SWIA MHDS REGION	9,125.00
HEARTLAND TIRES AND TREADS INC	RENT - PUBLIC HEALTH	1,530.00
HELGET INC	ROADS/TIRES - STOCK	4,254.64
HENRY SCHEIN INC	EQUIP - JAIL	40.00
HGM ASSOCIATES INC	SUPPLIES - JAIL	1,330.87
HILTI INC	PROF SVC - NON DEPARTMENTAL	29,511.62
HOLLY COLLINS	ROADS/TOOLS	1,407.16
HOME DEPOT USA INC	MEETING - VA	150.00
HORWATH LAUNDRY MACHINERY COMPANY	SUPPLIES - B&G	550.72
	PROF SVC - JAIL	1,878.03

HOTSY EQUIPMENT CO	ROADS/REPAIR - HONEY CRK	1,430.29
HS MEDICAL BILLING SERVICES	PROF SVC - PUBLIC HEALTH	118.61
HY VEE STORE	SUPPLIES - JAIL	25.32
INDOFF	SUPPLIES - TREASURER	3,770.57
INFOSAFE SHREDDING INC	PROF SVC - DHS	806.00
INLAND TRUCK PARTS	ROADS/REPAIR	2,330.15
INSIGHT PUBLIC SECTOR	LICENSES - JAIL	2,011.56
IOWA ASSOCIATION OF COUNTY COMMISSIONERS AND VETERAN SERVICE OFFICERS	DUES - VA	50.00
IOWA ASSOCIATION OF COUNTY MEDICAL EXAMINERS	MEMBERSHIP - MED EXAMINER	900.00
IOWA COUNTIES INFORMATION TECHNOLOGY (ICIT)	MEMBERSHIP - SHERIFF	50.00
IOWA COUNTY ATTORNEYS ASSOCIATION	DUES - CO ATTORNEY	1,990.00
IOWA COUNTY RECORDERS ASSOCIATION	DUES - RECORDER	200.00
IOWA DEPARTMENT OF PUBLIC SAFETY	QTRLY BILLING - COMMUNICATIONS	13,140.00
IOWA DEPT OF NATURAL RESOURCES	PERMIT - CONSERVATION	375.00
IOWA STATE ASSOCIATION OF COUNTIES	REGISTRATION - AUDITOR	155.00
IOWA STATE ASSOCIATION OF COUNTY AUDITORS	REGISTRATION - AUDITOR	50.00
IOWA WASTE SERVICES HOLDING INC	PROF SVC - JAIL	2,421.26
IOWA WASTE SERVICES HOLDINGS INC	ROADS/UTILITIES	632.05
IOWA WESTERN COMMUNITY COLLEGE	TRAINING - SWI JUV	166.00
IOWA WORKFORCE DEVELOPMENT	UNEMPLOYMENT 1ST QUARTER 2021	11,180.00
IP PATHWAYS LLC	EQUIP - IT	19,878.86
ISCTA	REGISTRATION - TREASURER	150.00
IVAN DELGADO MD	MED SVCS - JAIL	3,489.86
J P COOKE CO	PROF SVC - B&G	56.90
JACKSON SERVICES INC	PROF SVC - B&G	457.14
JAMIE MASS	REIMB EXP - JAIL	12.81
JDW MIDWEST LLC	PROF SVC - PLANNING	600.00
JEFFREY W ANDERSEN	ROADS/TIRES - 376	4,022.52
JEFFS WASH & GLO	PROF SVC - SHERIFF	275.00
JENSEN BUILDERS LTD	ROADS/HANCOCK	459,379.81
JENSEN TIRE & AUTO CO	ROADS/TIRES - 432	964.00
JEREDITH BRANDS LLC	MO BILL - B&G	21,409.79
JEREMY PETERSEN	REIMB EXP - SHERIFF	291.57
JERICO PROPERTIES LLC	RENT ASSIST - SWIA MHDS REGION	29.00
JESSE JEROME SHEA	MEETING - VA	157.36
JESSICA COFFMAN	REIMB EXP - MED EXAMINER	489.49
JIM HAWK TRUCK TRAILERS INC	ROADS/PARTS	2,180.52
JKL ENTERPRISES INC	ROADS/SUPPLIES - ANNEX	252.68
JOANN PALUBECKI ESTATE	WELL CLOSURE - ENV HEALTH	500.00
JODIE BECKMAN	REIMB EXP - MILEAGE	45.36
JOHN DEERE FINANCIAL	ROADS/PARTS	17.46
JOHNSON COUNTY (IA)	TRANSPORT - SWIA MHDS REGION	61.62
JOHNSON DRYWALL CO INC	PROF SVC - NON DEPARTMENTAL	3,950.00
JON POORE	REIMB EXP - JAIL	150.87
JON THOMAS MD	MED SVCS - JAIL	6,973.55
JONATHAN RANDALL KROHM	ROADS/MATERIALS	13,845.00
JONES AUTOMOTIVE INC	PROF SVC - SHERIFF	1,314.00
JOSHUA HARKER	REIMB EXP - SHERIFF	211.32
JP BORING CO	PROF SVC - ENV HEALTH	10,326.90
JP LUMBER INC	ROADS/PARTS	78.37
JULIE JAMESON	TRANSCRIPTS - CO ATTORNEY	149.00
JUSTIN SCHULTZ	REIMB EXP - BOARD	146.88
KAMBY ENTERPRISES LLC	POSTAGE - MED EXAMINER	144.22
KAREN FOREMAN	REIMB EXP - MED EXAMINER	684.21
KARL CHEVROLET INC	ROADS/NEW EQUIPMENT - 452	28,045.24
KBC INC	SUPPLIES - B&G	116.98
KELLY GAMMEL	REIMB EXP - JAIL	26.45
KEVIN MICHAEL HIRST	DRAINAGE - FENSLER - CONSTR/MAINT - VARMINT CONTR	100.00
KIMARIE MAASSEN	REIMB EXP - SWIA MHDS REGION	47.04
KONE INC	PROF SVC - JAIL	298.04
KONICA MINOLTA BUSINESS SOLUTIONS USA INC	PROF SVC - EMA	166.10
KRISTINA M RICHEY	REIMB EXP - SWIA MHDS REGION	715.68
KRONOS INC	PROF SVC - IT	1,056.60
LAB SOURCE INC	SUPPLIES - JAIL	5,573.50
LANGUAGE LINE SERVICE INC	PROF SVC - COMMUNICATIONS	179.86
LARSEN SUPPLY CO	SUPPLIES - JAIL	2,684.24
LAWSON PRODUCTS INC	ROADS/SUPPLIES	410.01
LEA A VOSS	REIMB EXP - TREASURER	107.52
LEE BHM CORP	PUBLICATIONS - BOARD	4,608.07
LEE VOLKENS	REIMB EXP - SHERIFF	218.94
LINDA BURNS	REIMB EXP - WIC	29.64
LYNN GROBE	REIMB EXP - BOARD	279.60
MAC INVESTMENTS INC	RENT ASSIST - GA	500.00
MACKENZIE ENTERPRISES LLC	SUPPLIES - CONSERVATION	292.80
MALINA DOBSON	REIMB EXP - CO ATTORNEY	15.45
MARCO TECHNOLOGIES LLC	PROF SVC - SWI JUV	199.00
MARILYN KENNEDY	REIMB EXP - AUDITOR	62.83
MARK MERTES	ROADS/REPAIR	282.00
MARKING REFRIGERATION INC	PROF SVC - CO ATTORNEY	163.25
MARKS CARPET CLEANING INC	PROF SVC - NON DEPARTMENTAL	915.00
MARLENE YOUNG	WELL CLOSURE - ENV HEALTH	500.00
MARVCO ENTERPRISES INC	EQUIP - COMMUNICATIONS	485.89
MARVEL THIEL	RENT ASSIST - GA	475.00
MATTHEW REEVES	REIMB EXP - IT	69.44
MCLAUGHLIN SEPTIC & PORTABLE SERVICES	PROF SVC - CONSERVATION	200.00
MCMULLEN FORD	VEHICLE - PUBLIC HEALTH	37,967.00
MENARDS	SUPPLIES - CONSERVATION	2,581.21
MENS WEARHOUSE INC (THE)	PROF SVC - SHERIFF	70.00
MERCHANTS BONDING COMPANY (MUTUAL)	BONDING - BOARD	100.00
MICHAEL GUSTAFSON	PROF SVC - B&G	150.00
MICHAEL GUTTAU	MEETING - VA	150.00
MICHAEL J BORUFF	PROF SVC - ENV HEALTH	199.70
MICHAEL M SALES	PROF SVC - JAIL	885.00

MICHAEL TODD & COMPANY	ROADS/SUPPLIES - 504	1,036.48
MIDAMERICAN ENERGY	MO BILL - B&G	26,220.59
MIDLANDS HUMANE SOCIETY	CONTRACT - ANIMAL CONTROL	7,121.63
MIDWEST AUTOMATIC FIRE SPRINKER	PROF SVC - JAIL	267.05
MIDWEST CARD & ID SOLUTIONS LLC	PROF SVC - EMA	40,067.50
MIDWEST MEDICAL AND SAFETY INC	SUPPLIES - SHERIFF	102.35
MIDWEST SERVICE AND SALES CO	ROADS/SUPPLIES	21,760.80
MILLS COUNTY (IA)	SVC FEES - BOARD	245.00
MIRANDA WACHTER	REIMB EXP - SWIA MHDS REGION	7.28
MIRION TECHNOLOGIES (GDS) INC	SUPPLIES - JAIL	173.99
MMB LLC	ROADS/PARTS	396.13
MOBILE MINI INC	RENT - PUBLIC HEALTH	648.83
MONOPRICE INC	SUPPLIES - IT	412.39
MONTGOMERY COUNTY (IA)	TRANSPORT - SWIA MHDS REGION	166.00
MPE EQUIPMENT SERVICES INC	ROADS/REPAIR - 200	2,850.91
MUMM LAW FIRM	DRAINAGE - 2019 FLOOD - VANMAN - PROF SVCS	52.50
MUNICIPAL HOUSING AGENCY	RENT ASSIST - GA	50.00
NAOMI FRIEND	SUPPLIES - CONSERVATION	208.00
NATHAN BRENSSEL	REIMB EXP - SHERIFF	506.68
NATIONAL ASSOCIATION OF COUNTY ENGINEERS	ROADS/REGISTRATION	250.00
NCH CORPORATION	PROF SVC - JAIL	2,406.30
NEBRASKA MACHINERY COMPANY	ROADS/SERVICE - 215	14,304.86
NELSON & ROCK CONTRACTING INC	ROADS/VOUCHER 2	180,858.44
NEW CENTURY PHYSICIANS OF IOWA PC	MED SVCS - JAIL	749.70
NEWMAN SIGNS INC	ROADS/MATERIALS	3,526.38
NEXTAFF GROUP LLC	MED SVCS - PUBLIC HEALTH	3,329.43
NINA HOANG	REIMB EXP - JAIL	403.43
NISHNABOTNA VALLEY RURAL ELECTRIC	ROADS/UTILITIES	2,398.23
NMC GROUP INC	PROF SVC - B&G	521.73
NMS LABS	MED SVCS - MED EXAMINER	1,875.00
NSG LOGISTICS LLC	ROADS/MATERIALS - UNDERWOOD	32,646.69
OLD HWY 6 TRACTOR & EQUIPMENT	PROF SVC - SHERIFF	518.07
OMAHA COMPOUND	SUPPLIES - JAIL	2,951.99
OMAHA COUNCIL BLUFFS METROPOLITAN AREA PLANNING AGENCY	CITIES PROGRAM - BOARD	8,585.20
OMAHA COUNCIL BLUFFS PLUMBING INC	PROF SVC - JAIL	540.00
OMAHA DOOR & WINDOW CO INC	PROF SVC - JAIL	1,565.20
OMAHA TRUCK CENTER COMPANY INC	ROADS/PARTS	14,130.77
OMG MIDWEST INC	ROADS/MATERIALS	5,228.35
OMNI CENTRE LLC	RENT - WIC	1,983.00
OTIS ELEVATOR COMPANY	PROF SVC - B&G	834.50
OUTDOOR POWER GROUP INC	SUPPLIES - CONSERVATION	460.71
PAGE COUNTY (IA)	TRANSPORT - SWIA MHDS REGION	1,009.20
PALUBECKI FAMILY TRUST	WELL CLOSURE - ENV HEALTH	500.00
PARTNERSHIP FOR PROGRESS INC	RCF - SWIA MHDS REGION	40,021.00
PATTISON SAND COMPANY LLC	ROADS/MATERIALS	12,037.76
PAUL THIES	ROADS/UTILITIES - UNDERWOOD	205.62
PAUL WELLMAN	WELL CLOSURE - ENV HEALTH	500.00
PAYLESS OFFICE PRODUCTS	SUPPLIES - PUBLIC HEALTH	11,894.58
PEOPLESERVICE	UTILITY ASSIST - GA	68.72
POPCO INC	MO BILL - PLANNING	107.00
POTTAWATTAMIE COUNTY BOARD OF SUPERVISORS	WORK COMP - WIC	378.70
POTTAWATTAMIE ARTS/CULTURE ENTERTAINMENT (PACE)	PROF SVC - BOARD	900.00
POTTAWATTAMIE COUNTY	HOTEL/MOTEL TAX - CONSERVATION	955.00
POTTAWATTAMIE COUNTY CONSERVATION BOARD	PROCESSING FEES - CONSERVATION	1,072.27
POTTAWATTAMIE COUNTY EMERGENCY MGT AGENCY	SUPPLIES - CONSERVATION	276.00
POTTAWATTAMIE COUNTY SHERIFF	TRANSPORT SVC FEES - BOARD	22,709.96
POTTAWATTAMIE COUNTY TREASURER	ROADS/UTILITIES	1,381.80
PRIDE GROUP INC (THE)	RCF - SWIA MHDS REGION	12,190.60
QUADIENT INC	POSTAGE - VARIOUS	3,984.84
R & S WASTE SYSTEMS LLC	ROADS/UTILITIES	727.18
RAFAEL RODRIGUEZ	REIMB EXP - IT	67.76
RED OAK WELDING SUPPLIES INC	ROADS/SUPPLIES	246.71
REGIONAL WATER INC	MO BILL - CONSERVATION	915.05
REPORTING SERVICES LLC	TRANSCRIPTS - CO ATTORNEY	641.80
REX WOODBURY	REIMB EXP - SHERIFF	32.09
RICHARD C ROSAS	PROF SVC - JAIL	122.00
RICHARD HIATT	REIMB EXP - SHERIFF	301.17
RICOH USA INC	PROF SVC - BOARD	182.58
RONCO CONSTRUCTION COMPANY INC	PROF SVC - B&G	177,170.43
RYAN OLDEROG	REIMB EXP - SHERIFF	12.49
RYAN PENNEY	REIMB EXP - CONSERVATION	14.97
SANDAU BROTHERS SIGN COMPANY	PROF SVC - PUBLIC HEALTH	1,800.00
SANOFI US SERVICES INC	SUPPLIES - PUBLIC HEALTH	1,677.25
SAPP BROS PETROLEUM INC	FUEL - SHERIFF	9,329.67
SBT STENGER ENTERPRISES INC	PROF SVC - JAIL	350.00
SCHILDBERG CONSTRUCTION CO INC	ROADS/ROCK	364,026.19
SCHROER & ASSOCIATES PC	PROF SVC - JAIL	180.00
SCOTT BELT	REIMB EXP - BOARD	139.60
SDJD BROWN INC	PROF SVC - SHERIFF	6,034.48
SECURITY EQUIPMENT INC	PROF SVC - B&G	1,464.00
SECURITY TRANSPORT SERVICES INC	TRANSPORT - JAIL	1,139.30
SHAWN JENSEN	REIMB EXP - JAIL	56.32
SHELBY COUNTY (IA)	REIMB EXP - SWIA MHDS REGION	315.04
SHELLEY WELTER	REIMB EXP - SWIA MHDS REGION	294.00
SHELLY HOVEY	REIMB EXP - SWIA MHDS REGION	223.44
SITEONE LANDSCAPE SUPPLY HOLDING LLC	SUPPLIES - JAIL	388.75
SOUTH IOWA AREA CRIME COMMISSION	TRAINING - JAIL	75.00
SOUTHWEST IOWA MENTAL HEALTH CENTER	CRISIS SVC - SWIA MHDS REGION	8,000.00
SOUTHWEST IOWA PLANNING COUNCIL	PROF SVC - PUBLIC HEALTH	370.85
SPEEDEE DELIVERY SERVICE INC	PROF SVC - DHS	403.42
ST LUKES HEALTH RESOURCES	ROADS/DRUG SCREENING	126.00
STAPLES INC	SUPPLIES - DHS	521.69
STATE OF IOWA	PROF SVC - MED EXAMINER	805.80

STATE OF IOWA, SECRETARY OF STATE	INSPECTION - JAIL	940.00
STATE UNIVERSITY OF IOWA	PROF SVC - ENV HEALTH	370.00
SUZANNE WATSON	REIMB EXP - SWIA MHDS REGION	115.36
SYMPHONY DIAGNOSTIC SERVICES NO 1	MED SVCS - JAIL	536.00
SYNCHRONY BANK	MO BILL - JAIL	1,488.56
SYNCHRONY BANK	SUPPLIES - DHS	69.01
T HALL ABC INC	SUPPLIES - B&G	257.30
TARALEE HAYNES	REIMB EXP - SHERIFF	87.82
THIEN FARM MANAGEMENT INC	PROF SVC - CONSERVATION	500.00
THOMAS GROBE	LANDSCAPING - WEST POTT SWCD	1,450.50
TINIK INC	ROADS/EQUIPMENT - 452	15,965.00
TMS SERVICES INC	PROF SVC - JAIL	1,500.00
TODD MEYER	PROF SVC - CONSERVATION	33.99
TORYANN CROZIER	PROF SVC - CONSERVATION	290.00
TRACY CLEAVELAND	PROF SVC - ENV HEALTH	105.60
TRANSUNION RISK AND ALTERNATIVE DATA SOLUTIONS INC	PROF SVC - SHERIFF	75.00
TREASURER STATE OF IOWA	MED SVCS - SWIA MHDS REGION	51,599.17
TREAT AMERICA FOOD SERVICES	PROF SVC - SWI JUV	2,611.01
TW VENDING INC	SUPPLIES - JAIL	419.47
TYLER TECHNOLOGIES INC	PROF SVC - IT	15,645.44
ULTEIG ENGINEERS INC	ROADS/SERVICES	3,992.95
UNITED CHURCH OF AVOCA	RENT - WIC	50.00
US BANK NATIONAL ASSOCIATION	MO BILL - BOARD	13,350.27
US BANK NATIONAL ASSOCIATION	MO BILL - PLANNING/CONSERVATION	2,400.70
US BANK NATIONAL ASSOCIATION	PROF SVC - CO ATTORNEY	45.00
US CELLULAR	MO BILL - COMMUNICATIONS	320.21
US POSTAL SERVICE (QUADIENT)	POSTAGE - TREASURER	8,000.00
VINCE GUYER	REIMB EXP - SHERIFF	272.81
VISUAL EDGE INC	PROF SVC - TREASURER	348.64
VOLANO SOFTWARE LLC	PROF SVC - NON DEPARTMENTAL	8,820.00
W W GRAINGER INC	SUPPLIES - NON DEPARTMENTAL/B&G	2,228.83
WALDSTEIN HVAC LLC	PROF SVC - CONSERVATION	1,574.00
WALKERS FIRST AVENUE INC	PROF SVC - SHERIFF	21.95
WALNUT TELEPHONE COMPANY INC	MO BILL - COMMUNICATIONS	776.25
WAUBONSIE MENTAL HEALTH CENTER INC	SUPPORT SVC - SWIA MHDS REGION	2,803.87
WELLS FARGO FINANCIAL LEASING INC	PROF SVC - DHS	1,275.55
WELLS FARGO FINANCIAL LEASING INC	MO BILL - CO ATTORNEY	274.50
WEST PUBLISHING CORPORATION	PROF SVC - CO ATTORNEY	4,370.91
WESTERN ENGINEERING COMPANY INC	SUPPLIES - JAIL	266.25
WESTFAIR ASSOCIATION	SPONSORSHIP - CONSERVATION	250.00
WESTLAKE HARDWARE INC	SUPPLIES - CONSERVATION	134.83
WEX BANK	ROADS/FUEL	35,656.58
WILLIAM ELLIOTT III	REIMB EXP - MED EXAMINER	178.35
WILLIAM S DOOLEY	MEETING - VA	110.42
WINDSTREAM	MO BILL - COMMUNICATIONS	449.26
		<hr/>
		3,483,867.65

Fund	Payment Amount
0001 - GENERAL BASIC FUND	523,022.20
0002 - GENERAL SUPPLEMENTAL FUND	65,148.53
0003 - GAMBLING RESOURCES FUND	45,129.49
0005 - WIC/FEDERAL FUNDING FUND	2,788.15
0007 - LOST CONSERVATION FUND	200.00
0011 - RURAL SERVICES BASIC FUND	186,555.12
0018 - SPECIAL LAW ENFORCEMENT FUND	1,339.00
0019 - PROPERTY ACQUISITION & IMPROVEMENT FUND	177,170.43
0020 - SECONDARY ROADS FUND	1,311,409.98
0023 - REAP FUND	2,230.03
0027 - CO CONSERV LAND ACQ	792.11
0036 - LOST SOIL CONS WEST FUND	1,450.50
0037 - LOST SOIL CONS EAST FUND	985.44
0040 - C.I.T.I.E.S. FUND	279,791.00
0046 - WEST SWCD/POTT CO STRUCTURES FUN	90.00
0049 - POTTAWATTAMIE COUNTY IMPACT FUND	5,493.51
1610 - BOND SERIES 2018 CAPITAL FUND	52,022.53
1620 - BOND SERIES 2020A CAPITAL FUND	28,880.81
1925 - 2020B ROADS CAPITAL PROJECT FUND	459,379.81
4000 - EMER MANAGEMENT SERVICE FUND	46,055.14
4010 - E911 FUND	35,760.05
4155 - MHDS REGION FUND	224,893.05
5400 - JUVENILE DETENTION	9,755.59
6000 - DRAINAGE	23,525.18
	<hr/>
	3,483,867.65

# **Scheduled Sessions**

**Chief Carmody/Council Bluffs  
Police Department**

**Update on Southwest Iowa Training Facility and  
100-yard Shooting Range Project**



**INVOICE**

**DATE:** April 20, 2021

Invoice #: 042021-P2101

**TO:** County Board of Supervisors  
227 S 6th St  
Council Bluffs, IA 51501

Description	Amount
<b>Southwest Iowa 100-Yard Shooting Range Addition</b> Design fees, testing fees, grading package cost, Lund Ross construction costs and Action Target costs	\$1,513,943.50
	<u>\$1,513,943.50</u>

Make check  
payable:

**City Treasurer**  
**209 Pearl Street**  
**Council Bluffs, IA 51503**

\_\_\_\_\_  
City Treasurer  
City of Council Bluffs, Iowa

Federal ID# 42-6004428

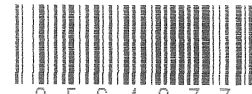
G/L Code: S35700-445000-P2101





**ESTIMATED TOTAL PROJECT COST**  
**Southwest Iowa Shooting Range – 100-yard range**  
**City of Council Bluffs / Pottawattamie County**  
**10073 192nd St, Council Bluffs, IA 51503**  
**HGM Project No. 110520**  
**April 7, 2021**

<u>Item</u>	<u>Cost</u>
1. DESIGN FEES .....	\$86,600.00
2. TESTING FEES .....	\$7,000.00
(Geotechnical Report, Soil Compaction Testing)	
3. GRADING PACKAGE COST.....	\$32,500.00
4. LUND ROSS CONSTRUCTION COST .....	\$1,575,672.00
5. ACTION TARGET COST .....	\$1,181,930.00
Subtotal .....	\$2,883,702.00
<u>Contingency (5%).....</u>	<u>\$144,185.00</u>
<b>Total .....</b>	<b>\$3,027,887.00</b>



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**2020-09714**

RECORDER MARK BRANDENBURG

POTTAWATTAMIE COUNTY, IA

FILE TIME: 07/20/2020 12:28:53 PM

RECORDING FEE

0.00

**NO FEE**

**RECORDER'S COVER SHEET**

**Prepared by:**

**Pottawattamie County Board of Supervisors  
227 South 6<sup>th</sup> Street  
Council Bluffs, Iowa 51501  
Phone: (712) 328-5644**

**Return Document to:**

**Pottawattamie County Board of Supervisors  
227 South 6<sup>th</sup> Street  
Council Bluffs, Iowa 51501  
Phone: (712) 328-5644**

**Document Title:**

**Southwest Iowa Training Facility Revised Joint 28E Agreemen**

ORIGINAL

## SOUTHWEST IOWA TRAINING FACILITY REVISED JOINT 28E AGREEMENT

This AGREEMENT (“Agreement”) is hereby entered into as of this 14<sup>th</sup> day of July, 2020, by and between the City of Council Bluffs, Iowa (“City”) and Pottawattamie County (“County”), both together hereafter referred to as the “Parties.”

**WHEREAS;** the Parties entered into a joint 28E Agreement on March 28, 2005 (Original Agreement) to construct, operate, and maintain the Southwest Iowa Training Facility, hereinafter referred to as the “Facility”; and

**WHEREAS;** the Facility is a voluntary joint undertaking of units of government in Pottawattamie County, Iowa, as authorized by Chapter 28E of the Code of Iowa; and

**WHEREAS;** Operation and maintenance of the Facility shall be a voluntary joint effort between the Parties, and no new organization shall be created by this Agreement; and

**WHEREAS;** the parties wish to modify terms of the Original Agreement to better reflect current operations and the addition of a 100-yard rifle range.

**NOW, THEREFORE,** in consideration of the foregoing, the Parties hereby agree that:

1. **Purpose** – The Facility is established for the purpose of coordinating law enforcement training in and around the Southwest Iowa area. This Facility is intended and is hereby declared to be a combination of units of government organized for the purpose heretofore set out, as authorized by Chapter 28E of the Code of Iowa.
2. **Principal Place of Business** – The principal place of business of the Facility shall be 10073 192<sup>nd</sup> St. Council Bluffs, IA 51501.
3. **Conduct of Business** – The City shall be responsible for the day-to-day operation and maintenance of the Facility, including all staffing, training, scheduling, grounds maintenance, facility maintenance and bookkeeping. Any usage of the Facility by the County shall be at no cost to the County, however, County shall contact City prior to any proposed usage and schedule such usage accordingly.
4. **Term** - This Agreement shall commence pursuant to authority granted by the resolution being attached hereto and, by reference, made a part hereof. Upon commencement under this paragraph, the term of this Agreement shall be perpetual unless either party provides the other party with one hundred eighty (180) days prior written notice to terminate or dissolve this agreement, with the following conditions:
  - a. The land is owned by the City, and the building/fixtures are jointly owned by the City and County. If the parties agree on the value of the building and fixtures as of the termination date of this Agreement, then the City shall pay one-half of that value to the County.

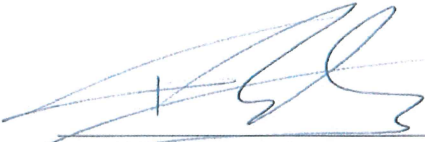
- b. If the parties cannot agree on the value of the buildings and fixtures, either party may hire an appraiser to set the value and send the appraiser's report to the other party. The other party may accept the appraiser's report, or reject it and hire an appraiser of its own.
  - c. If the parties still cannot agree on a value once both appraiser's reports have been submitted and exchanged, then the parties shall agree on the hiring of a third appraiser and the value set by the third appraiser shall be binding on both parties.
  - d. The County's obligation to share in expenses ends upon the effective date of the termination of this Agreement.
5. **Staffing** – City shall provide staffing to operate the Facility at its own expense and shall have full administrative authority on the operation and habitation of the Facility. Any usage fees generated by the Facility, not including any payment or usage by the County, shall be kept by the City to offset staffing costs under this paragraph.
6. **Operations Financing** – The City shall pay all costs associated with the operations and maintenance of the Facility, including but not limited to the following expenses and/or services: electrical, propane, heating and cooling, custodial services, grounds and building maintenance, building supplies and insurance coverage.
7. **Capital Expenditures** – Capital Expenditure items for the Facility, excluding staffing, operation and maintenance costs as outlined in paragraph 5 and 6 above, shall be separately proposed and identified in each fiscal year Facility budget and, unless otherwise agreed at the time such budget is approved by the Council Bluffs City Council and the Pottawattamie County Board of Supervisors, the Parties hereby agree that upon approval of said budget each shall bear one-half the cost of acquiring such capital items. The Parties also agree to each bear one-half the cost of any unplanned or unforeseen Capital Expenditures that arise during the term of this Agreement. The replacement or repair of fixtures or improvements with costs in excess of Ten Thousand Dollars (\$10,000), after the application of insurance proceeds (if any), is presumed to be a Capital Expenditure.
8. **Budgets** – On or before January 31<sup>st</sup> of each year under this Agreement, the City of Council Bluffs Chief of Police and the Pottawattamie County Sheriff shall recommend and submit the Facility budget to the Council Bluffs City Council and Pottawattamie Board of Supervisors, respectively, for review and formal approval as part of their respective budgeting procedures. Said budget will be for the fiscal year commencing July 1<sup>st</sup> following submission. Said budget shall reflect anticipated costs of operation, maintenance and capital expenditures, as well as anticipated revenues and the sources thereof.
  - a. **Budget/Financials Preparation** – The City agrees to prepare the Facility budget and financial report at its own expense and to provide all data entry and bookkeeping related to the preparation of said budget and financial report at its own expense.

- b. **Budget Administration** - The City of Council Bluffs Chief of Police and the Pottawattamie County Sheriff shall be charged with the administration of the budget for the Facility and shall; keep their respective governing bodies informed of the status of said budget through such expenditures (foreseen and unforeseen), balance, and revenue reports as may from time to time be requested by their respective governing bodies.
  - c. **Budget Approval** – The commitment to pay budgeted expenditures for any particular fiscal year shall be deemed to have been made by the City and the County upon their approval of their respective budgets reflecting expenditures, operations and maintenance costs of the Facility. Expenditures over-budget, or unforeseen capital expenditures, shall not be made unless they have been approved in advance by the City of Council Bluffs Chief of Police and the Pottawattamie County Sheriff, in accordance with their respective budgetary allocation and approval process.
9. **Severability** – If any provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision(s) or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or the validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with this paragraph, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in intent to the stricken provision as is legally possible.
10. **Modification** – This Agreement may be supplemented, amended, or modified only in writing and by mutual agreement of the Parties.
11. **Entire Agreement** – This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the Parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.
12. **Notice** – Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows, or to such other address as either party may from time to time specify in writing to the other party:

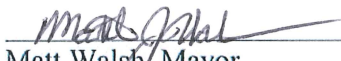
City of Council Bluffs, IA  
Mayor's Office, City Hall  
209 Pearl St.  
Council Bluffs, IA 51503

Pottawattamie County, IA  
Board of Supervisors  
227 S. 6<sup>th</sup> St.  
Council Bluffs, IA 51501

Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation receipt.

  
Justin Schultz, Chairman,  
Board of Supervisors  
Pottawattamie County, Iowa

June 30, 2020

  
Matt Walsh, Mayor,  
City of Council Bluffs, IA

July 14, 2020

**Jim Hughes, Mark Hughes, Sandy Winton/Jim  
Hughes Real Estate & John Jorgensen/HGM**

**Discussion on potential subdivision at 240<sup>th</sup> St  
and Pioneer Trail**

**Jason Slack/Director, Buildings and Grounds**

**Discussion and/or decision to approve:  
Contract with Mecco-Henne Contracting for  
the Courthouse Addition Project**



 **AIA<sup>®</sup> Document A101<sup>®</sup> – 2017****Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the Fourth day of May in the year Two Thousand and Twenty One  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

Pottawattamie County Board of Supervisors  
227 South 6th Street  
Council Bluffs, Iowa 51501  
Phone: 712-328-4791

and the Contractor:  
(Name, legal status, address and other information)

Meco-Henne Contracting, Inc.  
4140 South 87<sup>th</sup> Street  
Omaha, Nebraska 68127  
Phone: 402-339-8127

for the following Project:  
(Name, location and detailed description)

Pottawattamie County Courthouse Addition  
227 South 6th Street, Council Bluffs, Iowa  
The Work includes but is not limited to a building addition to the Courthouse. Included is demolition of portions of the existing courthouse, existing entry stairs, ramps and storefront along with certain mechanical and electrical items. New work at the lower level and first floor. An elevator is also part of the work. Extension of existing electrical systems, including lightning protection system, and structured cabling. Extension of existing mechanical systems including hot and chilled water plant to new air handling units.

The Architect:  
(Name, legal status, address and other information)

HGM Associates Inc.  
640 5th Avenue  
Council Bluffs, Iowa 51501  
Phone: 712.323.0530

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101@-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201@-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

### EXHIBIT A INSURANCE AND BONDS

#### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

#### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

#### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

Init.

Not later than Five Hundred and Twenty ( 520 ) calendar days from the date of commencement of the Work.

By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
ALL WORK	October 6, 2022

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Five million, Five hundred Twenty-Five Thousand Dollars ( \$ 5,525,000 ), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
No alternate items were taken.	Not Applicable (N/A)

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
N/A		

§ 4.3 Allowances, if any, included in the Contract Sum: *(Identify each allowance.)*

Item	Price
Allowance #1 – Security	\$40,000
Allowance #2 – Construction Staking	\$11,800
Allowance #3 – Construction Contingency	\$20,000

§ 4.4 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
#1 Each additional auger cast grout pile beyond that detailed.	Per Pile	\$1,000
#2 Each additional foot of pile depth below that detailed. (Credit price for each foot of pile depth less than that detailed shall be the same as the unit price for each foot of additional length.)	Per Foot	\$18

§ 4.5 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

If the Contractor shall fail to meet the completion time stated by the Contractor on their Bid Proposal form, the Contractor agrees to pay the Owner as liquidated damages and not as a penalty, the sum of \$500 for each and every calendar day that the Contractor is in default of substantial completion of the work under this Contract.

Init.

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User Notes:

(2034530091)

**§ 4.6 Other:**

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

N/A

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

N/A

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the FIRST day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the THIRTIETH day of the SAME month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than THIRTY ( 30 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

5% (Five Percent)

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

N/A

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

N/A

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

N/A

**§ 5.1.8** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 5.1.9** Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

**§ 5.2.2** The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

N/A

**§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

0 % (Zero Percent)



## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

Kimberly Bogatz, AIA, LEED AP BD+C  
HGM Associates Inc.  
640 Fifth Avenue, Council Bluffs, Iowa 51501  
Phone: 712-323-0530 / Email: kbogatz@hgmonline.com

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

N/A

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

*(Name, address, email address, and other information)*

Jason Slack  
Pottawattamie County, Iowa  
229 South 6<sup>th</sup> Street  
Council Bluffs, Iowa 51501  
Phone: 712-328-4791 / Cell: 712-310-5257  
Email: Jason.Slack@pottcounty-ia.gov

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§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

Jon Henne  
Meco-Henne Contracting, Inc.  
4140 South 87<sup>th</sup> Street  
Omaha, Nebraska 68127  
Phone: 402-339-8127

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101<sup>TM</sup>-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101<sup>TM</sup>-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203<sup>TM</sup>-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

N/A

§ 8.7 Other provisions:

N/A

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101<sup>TM</sup>-2017, Standard Form of Agreement Between Owner and Contractor
- .2 Insurance and Bonds
- .3 AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for Construction
- .4

*(Paragraphs deleted)*

Drawings

Number	Title	Date
Refer to Index (Cover Sheet G1.1)	Pottawattamie County, Iowa Courthouse Addition	March 2021

.5 Specifications

Section	Title	Date	Pages
Refer to Table of Contents	Project Manual for Pottawattamie County, Iowa Courthouse Addition – Volume 1 and Volume 2	March 2021	Inclusive

Init.

.6 Addenda, if any:

Number	Date	Pages
#1	April 2, 2021	1-10
#2	April 13, 2021	1-7
#3	April 15, 2021	1-13
#4	April 15, 2021	1
#5	April 16, 2021	1-21
#6	April 19, 2021	1

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 8.

.7 Other Exhibits:

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ N/A ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

[ N/A ] The Sustainability Plan:

Title	Date	Pages
-------	------	-------

[ X ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Supplementary Conditions of the Contract for Construction	Supplementary Conditions of the Contract for Construction	March 2021	Inclusive

.8 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Bid Tabulation Dated April 20, 2021

Meco-Henne Proposal Dated April 20, 2021

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
Pottawattamie County, Iowa – Board of Supervisors  
*(Printed name and title)*

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

\_\_\_\_\_  
Meco-Henne Contracting, Inc.  
*(Printed name and title)*

Init.



# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Pottawattamie County, Iowa – Courthouse Addition»  
«227 South 6th Street, Council Bluffs, Iowa»

THE OWNER:

(Name, legal status and address)

«Pottawattamie County Board of Supervisors»«»  
«227 South 6th Street Council Bluffs, Iowa 51501»

THE ARCHITECT:

(Name, legal status and address)

«HGM Associates Inc.»«»  
«640 Fifth Avenue Council Bluffs, Iowa 51501»

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**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.



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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as

the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.



### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will



specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in

number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.



§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.



§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
  - .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
  - .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
  - .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
  - .5 damage to the Owner or a Separate Contractor;
  - .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- or

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;

- 2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed



by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## § 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

## § 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### §11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### § 12.2 Correction of Work

##### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.



§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect

timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract

Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

## § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

## § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

## § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work

properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.



§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party

provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

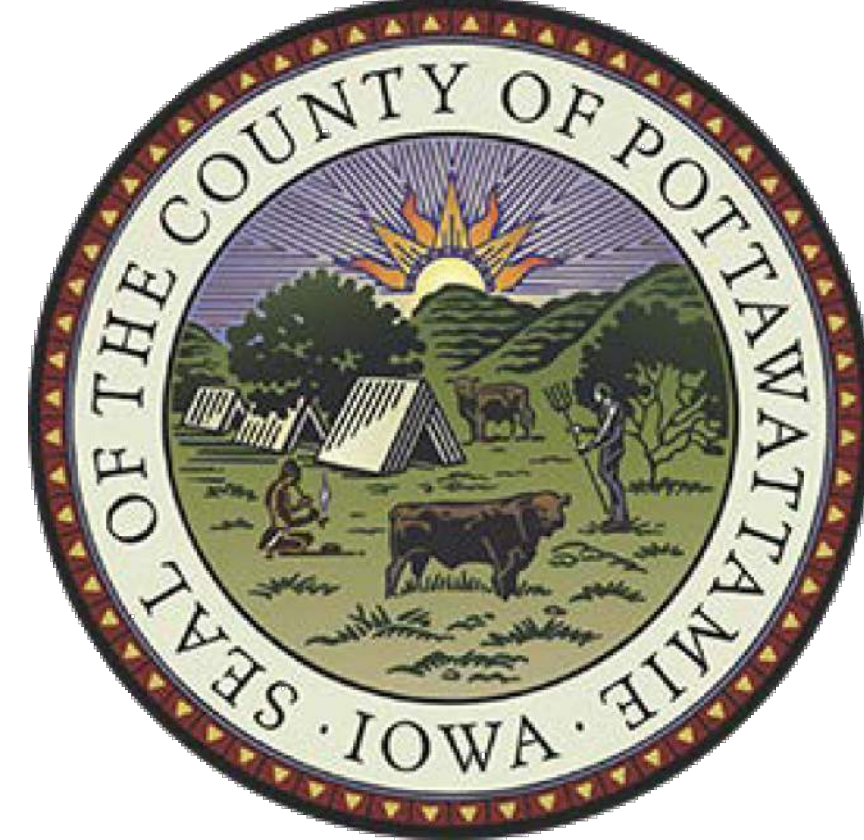
§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



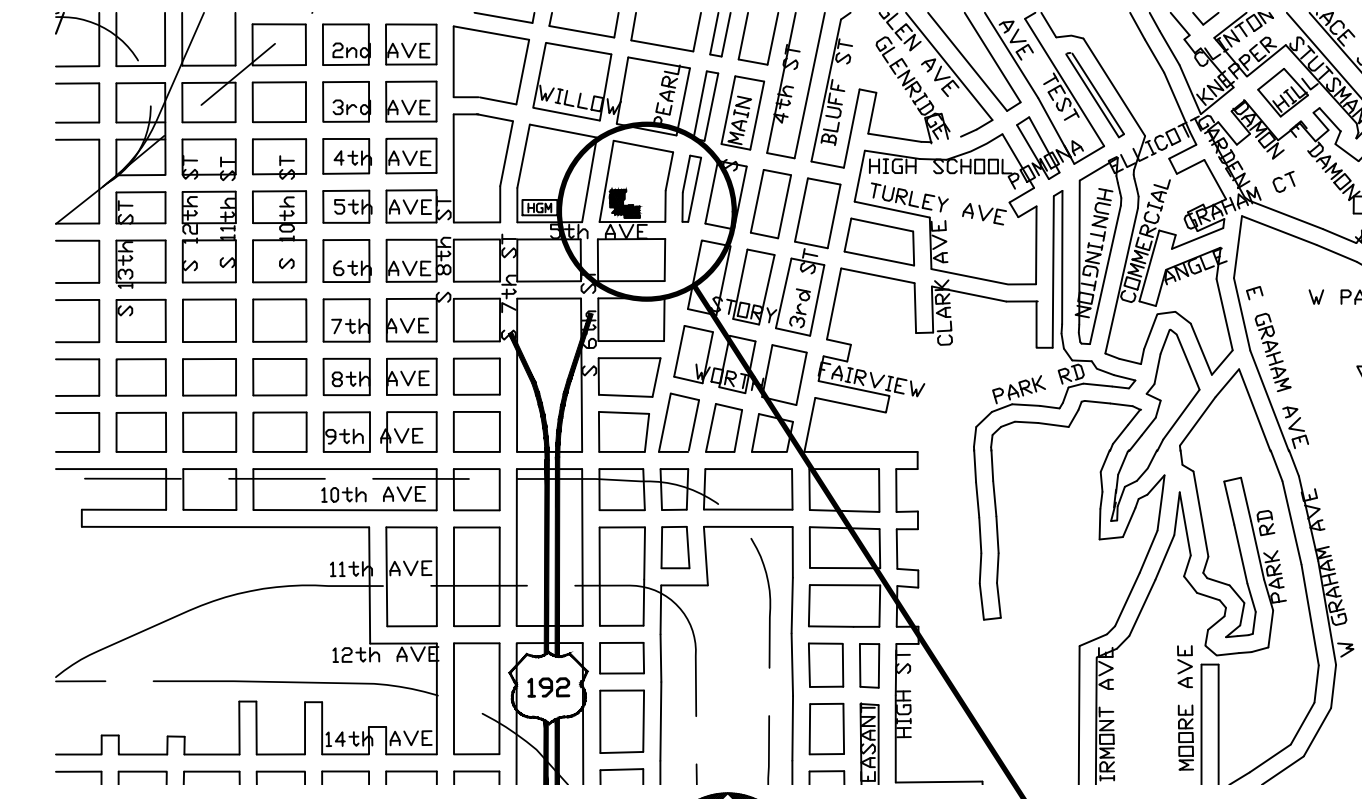






# POTTAWATTAMIE COUNTY, IOWA COURTHOUSE ADDITION

227 SOUTH 6TH STREET COUNCIL BLUFFS, IOWA  
HGM PROJECT NO. 107419E MARCH 2021



LOCATION PLAN  
SCALE: NONE



PROJECT LOCATION

## ARCHITECTURAL, STRUCTURAL AND CIVIL ABBREVIATIONS

A	B (CONT)	L (CONT)	R (CONT)
AB ANCHOR BOLT	ELEV ELEVATOR	LBS POUNDS	RTU ROOF TOP UNIT
A/C AIR CONDITIONING	EMER EMERGENCY	LDR LADDER	S SOUTH
ACT ACOUSTIC CEILING TILE	ENTR ENTRANCE	LH LEFT HAND	SAN SANITARY
ACM ALUMINUM COMPOSITE METAL	EOD EDGE OF DECK	LL LIVE LOAD	SBLK SPLASH BLOCK
ADJ ADJACENT	EOR END OF RETURN	LP LOW POINT	SC SHOWER CURTAIN
ADJT ADJUSTABLE	EQ EQUAL	LSF LINOLEUM SHEET FLOORING	SCHED SCHEDULE
AFF ABOVE FINISHED FLOOR	EQU EQUIPMENT	LT LIGHT	SD SOAP DISPENSER
AGG AGGREGATE	EHW EACH WAY	LVT LUXURY VINYL TILE	SECT SECTION
ALUM ALUMINUM	ENC ELECTRIC WATER COOLER	M METER(S)	SEF SEAMLESS EPOXY FLOORING
ALT ALTERNATE	EXH EXHAUST	MAS MASONRY	SEG SEGMENTAL
ANCH ANCHOR	EXIST EXISTING	MATL MATERIAL	SH SHELF, SHELVEYS
ANOD ANODIZED	EXPD EXPOSED	MCH MECHANICAL	SHT SHEET
APC ACOUSTICAL PANEL CEILING	EXT EXTERIOR	MED MEDICINE CABINET	SHTH SHEATHING
ARCH ARCHITECTURAL	F FA FIRE ALARM	MFR MANUFACTURER	SIM SIMILAR
ASPH ASPHALT	FB FACE BRICK	MH MANHOLE	SLR SEALER
ATC ACOUSTICAL TILE CEILING	FBG FIBERGLASS	MJ MASONRY JOINT	SNP SANITARY NAPKIN DISPOSAL
AUTO AUTOMATIC	FBO FURNISHED BY OTHERS	MECH MECHANICAL	SNV SANITARY NAPKIN VENDOR
B BOTTOM	FCMP FIBER CEMENT WALL PANEL	MD MEDICINE CABINET	SNT SEALANT
B/B BOND BEAM	FD FLOOR DRAIN	MFR MANUFACTURER	SPEC SPECIFICATIONS
B/C BACK OF CURB	FE FIRE EXTINGUISHER	MH MANHOLE	SPF SPLIT-FACE
BD BOARD	FEC FIRE EXTINGUISHER CAB	MIN MINIMUM	SPMR SINGLE-PLY MEMBRANE ROOFING
BEN BENCH	FES FLARED END SECTION	MIR MIRROR	SQ SQUARE
BLDG BUILDING	FG FULL GLASS	MISC MISCELLANEOUS	SM SOLID SURFACING MATERIAL
BLK BLOCK	FIN FINISHED	MLD MODULAR	SSTL STAINLESS STEEL
BLKG BLOCKING	FIXT FIXTURE	MO MASONRY OPENING	STA STATION
BM BEAM	FLASH FLASHING	MOD MODULAR	STL STEEL
BM BENCHMARK	FLR FLOOR (ING)	MR MOISTURE RESISTANT	STD STANDARD
BMP BEST MANAGEMENT PRACTICE	FLUR FLOURESCENT	MTD MOUNTED	STR STRUCTURAL
BN BULLNOSE	FND FOUNDATION	MTL METAL	STV STAIN & VARNISH
BOS BOTTOM OF STRUCTURE	FR FRAMING	MULL MULLION	SUSP SUSPENDED
BOT BOTTOM	FRP FIBERGLASS REINF PLASTIC	N NORTH	SYM SYMMETRICAL
BRDG BRIDGING	FTG FOOTING	NIC NOT IN CONTRACT	T TREAD
BRG BRICK	FUR FURRING	NOM NOMINAL	T/B TOP AND BOTTOM
BS BOTH SIDES	FURN FURNACE	NTS NOT TO SCALE	TB TOP OF CURB
BSMT BASEMENT	FV FIELD VERIFY	O ON CENTER	TD TOP OF DEMO
BUR BUILT UP ROOF	G GAGE	OD OUTSIDE DIAMETER	TEG TEMPERED
BW BOTH WAYS	GALV GALVANIZED	OFF OFFICE	TERM TERMINAL
C CABINET	GB GRAB BAR	OH OVERHEAD	TER TERRAZZO
C/C COVER ELEVATION	GD GRADE, GRADING	OPG OPENING	TEX TEXTURED
CH CHAIR	GFB GLASS FIBER BLANKET/BATT	OPR OPERABLE	T/G TONGUE AND GROOVE
CIP CAST IRON PIPE	GL GLAZED FLOOR TILE	OSB ORIENTED STRAND BOARD	TH THICK (NESS)
CJR CIRCLE	GLASS, GLAZING	P PAINT	THR THRESHOLD
CJ CONTROL JOINT	GPDW GYP/PLUM DRYWALL	PAF POWDER ACTIVATED FASTENER	TOP TOP OF FOOTING
CLG CEILING	GRAN GRANULAR	PAV PAVEMENT	TON TOP OF MASONRY
CLOS CLOSET	GRD GROUND	PBD PARTICLE BOARD	TOS TOP OF SLAB
CLR CLEAR (ANCE)	GRT GROUT	PCC PORTLAND CEMENT CONCRETE	TOSTL TOP OF STEEL
C/S CURB AND GUTTER	H HB HOSE BIB	PCMP PRECAST WALL PANEL	TON TOP OF WALL
CMP CORRUGATED METAL PIPE	HBD HANDBOARD	PERF PERFORATED	TP TOP OF PAVEMENT
CMU CONCRETE MASONRY UNIT	HC HANDCAP	PERIM PERIMETER	TPTN TOILET PARTITION
CMWP COMPOSITE MTL WALL PNL	HCS HOLLOW CORE SLAB	PFM PREFABRICATED	TRTD TREATED
COL COLUMN	HDNR HARDWARE	PFN PREFINISHED	TTD TOILET TISSUE DISPENSER
CONC CONCRETE	HHS HOLLOW STRUCT SECTION	PL PLANT OF INTERSECTION	TV TELEVISION
CONST CONSTRUCTION	HJ HORIZONTAL JOINT REINF	PL PROPERTY LINE	TYP TYPICAL
CONT CONTINUOUS/CONTINUE	HM HOLLOW METAL	PLAS PLASTER	UC UNDER COUNTER
COORD COORDINATE	HRZ HORIZONTAL	PLAS PLASTER	US UNDERGROUND
CORR CORRIDOR	HR HIGH POINT	PLAS PLASTER	UNFIN UNFINISHED
CPT CARPET	HR HOUR	POL POLISHED	UNO UNLESS NOTED OTHERWISE
CRS COURSE	HT HEATING	FRHT PARTIAL HEIGHT	UR URINAL
CS COUNTER SHUTTER	HTG HEATING	PROP PROPOSED	V VAPOR BARRIER
C/S CONCRETE SLAB HARDENER	HVAC HEATING/VENTILATING	PSF POUNDS PER SQUARE FOOT	VCT VINYL COMPOSITION TILE
CSMT CASEMENT	HTG HEATING/VENTILATING	PSI POUNDS PER SQUARE INCH	VERT VERTICAL
CT CERAMIC TILE	IE INTERIOR ELEVATION	PT POINT OF TANGENCY	VIN VINYL
CTR COUNTER	INCL INCLUDING	PTD PAPER TOWEL DISPENSER	VTR VENT THRU ROOF
CUI CONCRETE UNDERLAYMENT	INS INSULATION	PRTN PARTITION	VWC VINYL WALL COVERING
CW COLD WATER	INST INSTALLED	PVC POLYVINYL CHLORIDE	W WEST
CY CUBIC YARD	INT INTERIOR	PND PLYWOOD	W/ WITH
D DBL DOUBLE	INV INVERT	Q QUARRY TILE	WC WATER CLOSET
DCS DIAPER CHANGING STATION	IRWP IMPACT RESISTANT WALL PNL	R RADIUS	WD WOOD
DF DRINKING FOUNTAIN	J JOINT FILLER BOARD	RA RASER	WDW WINDOW
DH DOUBLE HUNG	JST JOIST	RAF RESILIENT ATHLETIC FLOORING	WO WITHOUT
DIA DIAMETER	JT JOINT	RB RUBBER BASE	WH WATER HEATER
DIAG DIAGONAL	K KIT KITCHEN	RCP REINFORCED CONCRETE PIPE	WR WASTE RECEPTACLE
DIM DIMENSION	KO KNOCKOUT	REF REFERENCE	WSCOT WAINSCOT
DIP DUCTILE IRON PIPE	L LONG LONGITUDINAL	REFR REFRIGERATOR	WVF WELDED WIRE FABRIC
DISP DISPENSER	LAM LAMINATED	REIN REINFORCEMENT	X XL EXIT LIGHT
DN DOWN	LAV LAVATORY	REQD REQUIRED	Y Y WITH
DEEP DEEP	M METER(S)	REV REVERSE	YD YARD
DR DOOR	MATL MATERIAL	RH ROBE HOOK	Z Z
DR DOWN SPOUT	MCH MECHANICAL	RHT RESILIENT HAND	
DTL DETAIL	MED MEDICINE CABINET	RLT RESILIENT LANDING TILE	
DW DISHWASHER	MFR MANUFACTURER	RM ROOM	
DWG DRAWING	MH MANHOLE	RO ROUGH OPENING	
DWR DRAWER	MJ MASONRY JOINT	ROW RIGHT OF WAY	
E EAST	MULL MULLION	RR RESTROOM	
EF EACH FACE	N NORTH		
EJ EXPANSION JOINT	NIC NOT IN CONTRACT		
EL ELEVATION	NOM NOMINAL		
ELEC ELECTRICAL	NTS NOT TO SCALE		

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I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered architect under the laws of the State of Iowa.

(signature) *Kimberly A. Bogatz* 3-17-21  
Kimberly A. Bogatz, AIA, LEED

My registration renewal date is June 30, 2022.

Pages or sheets covered by this seal:  
ALL GENERAL SHEETS  
ALL ARCHITECTURAL SHEETS

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.

(signature) *John E. Jorgensen* 3-17-21  
John E. Jorgensen  
12855

My registration renewal date is December 31, 2021.

Pages or sheets covered by this seal:  
ALL CIVIL SHEETS

I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered landscape architect under the laws of the State of Iowa.

(signature) *Todd M. Maiellaro* 3-17-21  
Todd M. Maiellaro  
00559

My registration renewal date is June 30, 2021.

Pages or sheets covered by this seal:  
ALL LANDSCAPE SHEETS

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.

(signature) *Kelton J. Bush* 3-17-21  
Kelton J. Bush  
P-11139

My license renewal date is December 31, 2022.

Pages or sheets covered by this seal:  
ALL STRUCTURAL SHEETS

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.

(signature) *Justin L. Veik* 3-17-21  
Justin L. Veik  
P25419

My license renewal date is December 31, 2021.

Pages or sheets covered by this seal:  
ALL MECHANICAL SHEETS

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.

(signature) *Shane M. Hoss* 3-17-21  
Shane M. Hoss  
19675

My license renewal date is December 31, 2021.

Pages or sheets covered by this seal:  
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26 28 17	Enclosed Switches	26 28 17-1 to 4
26 29 13	Enclosed Controllers	26 29 13-1 to 5
26 41 13	Lightning Protection for Structures	26 41 13-1 to 3
26 43 00	Surge Protective Devices	26 43 00-1 to 4
26 51 00	Interior Lighting	26 51 00-1 to 8
26 56 00	Exterior Lighting	26 56 00-1 to 6

DIVISION 27 – COMMUNICATIONS

27 10 00      Structured Cabling for Voice and Data      27 10 00-1 to 11

DIVISION 28 – ELECTRONIC SAFETY AND SECURITY

28 10 00      Access Control      28 10 00-1 to 7  
28 20 00      Video Surveillance      28 20 00-1 to 6  
28 46 00      Fire Detection and Alarm      28 46 00-1 to 8

DIVISION 31 – EARTHWORK

31 10 00      Site Clearing      31 10 00-1 to 2  
31 20 00      Earthwork      31 20 00-1 to 6  
31 63 16      Auger Cast Grout Piles      31 63 16-1 to 8

DIVISION 32 – EXTERIOR IMPROVEMENTS

32 12 16      Hot-Mix Asphalt Paving      32 12 16-1 to 7  
32 13 13      Concrete Pavement      32 13 13-1 to 10  
32 92 00      Turf and Grasses      32 92 00-1 to 5  
32 93 00      Plants      32 93 00-1 to 8

DIVISION 33 – UTILITIES

33 41 00      Storm Drainage      33 41 00-1 to 4

1 SUPPLEMENTARY CONDITIONS  
2 OF THE CONTRACT FOR CONSTRUCTION  
3

4 The following supplements modify the "General Conditions of the Contract for Construction",  
5 AIA Document, 2017 Edition. Where a portion of the General Conditions is modified or deleted  
6 by these supplementary conditions, the unaltered portions should remain in effect.  
7

8 ARTICLE 2; OWNER

9 2.22 - Add the following clarification:

10  
11 The Owner will pay Capital Facilities Charges assessments by the utilities provider.  
12

13 ARTICLE 3; CONTRACTOR

14 3.2.2 - Add the following:

15  
16 If the Contractor fails to obtain written clarification of inconsistencies in the Bid  
17 Documents from the Architect, the contractor shall bid the more expensive version.  
18

19 3.6 - Add the following clarification:

20  
21 The Contractor shall pay all sales and other taxes associated with the work. The  
22 Contractor shall secure and pay for the building permit, inspections, and testing fees  
23 associated with the work.  
24

25 Pottawattamie County is sales tax exempt. Exemption certificates will be issued to the  
26 Contractor, Subcontractors and Suppliers on this project. The bidders shall not include  
27 sales tax in their bids.  
28

29 ARTICLE 5: SUBCONTRACTORS

30 5.2.1 - Add the following :

31  
32 The Contractor shall submit the list of subcontractors on AIA Document G705 "List of  
33 Subcontractors".  
34

35 ARTICLE 7: CHANGES IN THE WORK

36 7.3.3 - Add the following:

37  
38 Construction Change Directive Work (Additions or Deletions) payment shall consist of  
39 actual cost, plus fifteen percent (15%) markup to cover superintendence, general and  
40 incidental expense, profit, use of small tools and all other items not reflected in said  
41 actual cost. The Contractor's profit, and overhead markup on Subcontractor's work shall  
42 not exceed a total of five percent (5%). In no event, regardless of whether the work  
43 involved is done by the Contractor or by their Subcontractors, shall such markup  
44 percentage or cost of the work exceed twenty-five percent (25%) of such actual cost. The  
45 total cost of such work shall not exceed a predetermined maximum.



1 Following is a summary of Construction Change Directive Markups:

2		
3	Work by General Contractor's own forces	15% maximum (General)
4		
5	Work by Sub-Contractor's forces	15% (Sub)
6		<u>5%</u> (General)
7		20% maximum
8		
9	Work by Sub to Sub	15% (Sub/Sub)
10		5% (Sub)
11		<u>5%</u> (General)
12		25% maximum
13		

14 Actual cost shall mean the cost of material, labor and rental of equipment plus any  
15 additional performance bond premiums actually and necessarily paid in connection  
16 therewith. A complete material and labor breakdown shall be included. Construction  
17 directives submitted without a breakdown will not be considered.

18  
19 The actual cost of material shall be the actual cost thereof delivered at the site of the work  
20 as shown by true copies of original invoices. In no case will prices allowed for materials  
21 delivered to the work site be in excess of prices for which such materials could have been  
22 obtained and delivered if purchased by the Owner directly. Unused returned material  
23 may include a restocking charge.

24  
25 The actual cost of labor shall be the amount actually paid to workmen therefor plus social  
26 security tax and premiums of worker's compensation insurance and any other  
27 compensation required by law or contract actually paid in connection therewith. In no  
28 case will the rate of pay allowed for each class of labor shall be in excess of the rate  
29 established by current labor organizations.

30  
31 The actual cost of rental of equipment shall be determined by rates agreed upon prior to  
32 the commencement of such additional work. In cases of emergency, if such price  
33 agreement is not practicable, the cost of rental or equipment shall be subject to the  
34 approval of the Owner and/or Architect. In no case will the rate allowed for the rental of  
35 equipment be in excess of the local rate customarily charged for rental of such equipment  
36 or the rate which could be obtained by the Owner for the rental of such equipment.

37  
38 ARTICLE 9; PAYMENTS AND COMPLETION

39 9.3.1 - Add the following:

40  
41 The form of Application for Payment shall be a notarized AIA Document G702,  
42 Application and Certification for Payment, supported by AIA Document G703,  
43 Continuation Sheet.

1 9.3.1.3 - Add the following:  
2

3 9.3.1.3 Until final completion, the Owner will pay 95 percent of the amount due the  
4 Contractor on account of progress payments.  
5

6 9.10.2 - Add the following:  
7

8 The Contractor shall submit the following AIA Documents with the request for Final  
9 Payment:  
10

11 AIA Document G706, Contractors Affidavit of Payment of Debts and Claims.

12 AIA Document G706A, Contractors Affidavit of Release of Liens.

13 AIA Document G707, Consent of Surety to Final Payment.  
14

15 ARTICLE 11: INSURANCE AND BONDS

16 11.1.1 - Add the following:  
17

18 It shall be the Contractor's responsibility to have liability insurance covering all of the  
19 construction operations incident to completion of his contract. The Contractor must have  
20 on file with the Architect a current "Certificate of Insurance" prior to award of contracts.  
21

22 11.1.2.5 - Add the following:  
23

24 11.1.2.5 The Contractor shall furnish bonds covering faithful performance of the Contract and  
25 payment of obligations arising thereunder. Bonds may be obtained through the Contractor's  
26 usual source and the cost thereof shall be included in the Contract Sum. The amount of each  
27 bond shall be equal to 100 percent of the Contract Sum.  
28

29 11.1.2.6 The Contractor shall deliver the required bonds to the Owner not later than three days  
30 following the date the Agreement is entered into, or if the Work is to be commenced prior  
31 thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the  
32 Work, submit evidence satisfactory to the Owner that such bonds will be furnished.  
33

34 11.1.2.7 The Contractor shall require the attorney-in-fact who executes the required  
35 bonds on behalf of the surety to affix thereto a certified and current copy of the power of  
36 attorney.  
37

38 11.1.4 - Add the following:  
39

40 11.1.5 Liability Insurance shall include all major divisions of coverage and be on a  
41 comprehensive basis including:  
42

- 43 1. Premises Operations (including X, C and U coverages as applicable).
- 44 2. Products and Completed Operations.

3. Commercial General Liability, with fellow employee exclusion delete Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
4. Owned, non-owned and hired motor vehicles.
5. Broad Form Property Damage including Complete Operations.

11.1.6 If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

11.1.7 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to the commencement of work. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include the Owner, and the Architect as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations.

11.1.8 The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law:

1. Workers' Compensation:
  - a. State: Statutory
  - b. Applicable Federal (e.g., Longshoremen's): Statutory
  - c. Employer's Liability: \$500,000.00 per Accident
2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):
  - a. Bodily Injury:
    - \$1,000,000.00 Each Occurrence
    - \$2,000,000.00 Aggregate
  - b. Property Damage:
    - \$100,000.00 Each Occurrence
    - \$2,000,000.00 Aggregate
  - c. Products and Completed Operations to be maintained for 1 year after final payment
  - d. Property Damage Liability Insurance shall provide X, C and U coverage.
  - e. Broad Form Property Damage Coverage shall include completed Operations.
3. Contractual Liability:
  - a. Bodily Injury:
    - \$1,000,000.00 Each Occurrence
    - \$1,000,000.00 Aggregate

- 1                   b. Property Damage:
- 2                    \$1,000,000.00 Each Occurrence
- 3                    \$1,000,000.00 Aggregate
- 4
- 5           4. Business Auto Liability (including owned, non-owned and hired vehicles):
- 6            a. Bodily Injury:
- 7              \$1,000,000.00 Each Person
- 8              \$1,000,000.00 Each Occurrence
- 9            b. Property Damage:
- 10             \$100,000.00 Each Occurrence
- 11
- 12           5. This insurance must have no less than a combined single limit liability of \$1,000,000
- 13             each occurrence and \$2,000,000 annual aggregate.
- 14

15           11.1.9 - If this insurance is written on the Comprehensive General Liability policy form, the  
16           Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is  
17           written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

18           The liability insurance must include underground coverage in case of damage to utility cables,  
19           natural gas lines, or any other underground items. The Contractor must also have Worker's  
20           Compensation and Employers liability coverages required by the State of Iowa.

21           22

23           11.3.1 - Add the following:

24           25           The form of policy for this coverage shall be "Completed Value."

26           27           11.3.3 – Add the following:

28           29           The Owner will provide Builders Risk Insurance

30

31           **ARTICLE 12 - CHANGE OF CONTRACT TIME**

32

33           **12.1** The Contract Time may only be changed by a Change Order or a Written Amendment.

34           Any claim for an extension or shortening of the Contract Time shall be based on written  
35           notice delivered by the party making the claim to the other party and to ENGINEER  
36           promptly (but in no event later than seven days) after the occurrence of the event giving  
37           rise to the claim and stating the general nature of the claim. Notice of the extent of the  
38           claim with supporting data shall be delivered within twenty days after such occurrence  
39           (unless ENGINEER allows an additional period of time to ascertain more accurate data in  
40           support of the claim) and said notice shall constitute a representation by the party giving  
41           the notice that the adjustment claimed is the entire adjustment to which the claimant has  
42           reason to believe it is entitled as a result of the occurrence of said event. All claims for  
43           adjustment in the Contract Time shall be determined by ENGINEER in accordance with  
44           paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an  
45           adjustment in the Contract Time will be valid if not submitted in accordance with the  
46           requirements of this paragraph 12.1.

1           **12.2**The Contract Time will be extended in an amount equal to time lost due to delays  
2 beyond the control of CONTRACTOR if a claim is made therefore as provided in  
3 paragraph 12.1. Such delays shall include, but not be limited to acts or neglect by OWNER  
4 or others performing additional work as contemplated by Article 7, or to fires, floods, labor  
5 disputes, epidemics, abnormal weather conditions or Acts of God. A weather condition  
6 which is not more extreme than has occurred at the closest official weather recording  
7 stations in the most recent five year period will not be considered an abnormal weather  
8 condition. The term "Act of God" as used herein above shall be defined as an inevitable  
9 accident; such as an extraordinary interruption of the usual course of events that no  
10 experience, foresight or care which might reasonably have been expected could have  
11 foreseen or guarded against it, as lightning or tempests.

12  
13           **12.3**All time limits stated in the Contract Documents are of the essence of the Agreement.  
14 The provisions of this Article 12 shall not exclude recovery for damages [including but not  
15 limited to fees and charges of engineers, architects, attorneys and other professionals and  
16 court and arbitration (should the parties agree to arbitrate after the facts to be arbitrated are  
17 known) costs] for delay by either party.

18  
19           ARTICLE 13; MISCELLANEOUS PROVISIONS

20           13.5.1 - Add the following:

21  
22           13.5.1 The Contractor shall pay for all testing as required by the Paragraphs on Quality  
23 Assurance and Field Quality Control in the Specifications and as required by local  
24 building codes. Engage a testing agency acceptable to Architect. The Contractor is  
25 responsible for coordinating testing and notifying the Architect and Testing Agency as to  
26 when testing is required. Testing Agency shall submit all reports for testing directly to the  
27 Architect.

28  
29           Materials and installed work may require testing and re-testing at any time during  
30 progress of Work. Tests, including re-testing of rejected materials for installed Work,  
31 shall be done at Contractor's expense.

**TABULATION OF BIDS**

Project: **Pottawattamie County, Iowa  
Courthouse Addition**

Bid Date: Tuesday, April 20, 2021 @ 10:00 a.m.

Bid Location: Pottawattamie County Courthouse (227 South 6th Street, Council Bluffs, Iowa- 2nd Floor Boardroom)

HGM ASSOCIATES INC.  
640 Fifth Avenue  
Council Bluffs, Iowa 51501  
HGM Project No. **107419E**

<b>BIDDER:</b>		ConStruct, Inc. Omaha, NE	Meco-Henne Omaha, NE	Ronco Constr. Omaha, NE	Lund-Ross Omaha, NE
ITEM NO.	DESCRIPTION				
A	Bid Bond Included	X	X	X	X
B	Addenda Acknowledged	X	X	X	X
<b>C</b>	<b>Lump Sum Bid</b>	<b>\$5,420,000</b>	<b>\$5,525,000</b>	<b>\$5,796,000</b>	<b>\$5,869,000</b>
D	Bid Alternate #1 - Delete Snow Melt	-\$63,000	-\$69,000	-\$63,000	-\$70,380
E	Bid Alternate #2 - Delete Lightning Protection	-\$15,000	-\$15,000	-\$15,000	-\$11,510
<b>F</b>	<b>Lump Sum Bid +/-</b>	<b>\$5,342,000</b>	<b>\$5,441,000</b>	<b>\$5,718,000</b>	<b>\$5,787,110</b>
G	UNIT PRICES				
	Each additional auger cast grout pile (\$/pile):	\$950	\$1,000	\$3,000	\$1,000
	Each additional foot of pile depth (\$/foot):	\$16	\$18	\$100	\$18.50
H	Completion Date: Number of Calendar days	540	520	420	585

<b>BIDDER:</b>		Prairie Constr. Omaha, NE	AOI Corporation Omaha, NE	CR Anderson Omaha, NE	
ITEM NO.	DESCRIPTION				
A	Bid Bond Included	X	X	X	
B	Addenda Acknowledged	X	X	X	
<b>C</b>	<b>Lump Sum Bid</b>	<b>\$6,014,000</b>	<b>\$6,227,662</b>	<b>\$6,436,000</b>	
D	Bid Alternate #1 - Delete Snow Melt	-\$51,000	-\$76,903	-\$72,000	
E	Bid Alternate #2 - Delete Lightning Protection	-\$15,000	-\$10,961	-\$11,000	
<b>F</b>	<b>Lump Sum Bid +/-</b>	<b>\$5,948,000</b>	<b>\$6,139,798</b>	<b>\$6,353,000</b>	
G	UNIT PRICES				
	Each additional auger cast grout pile (\$/pile):	\$1,400	\$1,315	\$2,000	
	Each additional foot of pile depth (\$/foot):	\$24	27.59 * -7.25 **	\$15	
H	Completion Date: Number of Calendar days	548	364	600	

\* Add \$27.59/lf for pile lengths in excess of base bid quantities.

\*\* Deduct \$7.25/lf for pile lengths less than base bid quantities.

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REVISED BID PROPOSAL (ADDENDUM #3)

TO: **Jason Slack**  
**Pottawattamie County Board of Supervisors**  
**Council Bluffs, Iowa**

PROJECT: Pottawattamie County Courthouse Building Addition

I, or we, the Undersigned hereby propose to complete the above work, furnishing all materials, labor and service therefore, and all according to the DRAWINGS and PROJECT MANUAL as prepared by HGM ASSOCIATES INC., 640 5<sup>th</sup> Avenue, Council Bluffs, IA 51501, dated March 2021, for the sum set forth below, subject to all addenda officially issued by the Architect prior to bidding.

The Undersigned acknowledges that the following Addenda were received and considered in the preparation of this proposal, and their receipt and inclusion as a part of this proposal is hereby acknowledged.

ADDENDA NO.	DATED
<u>#01</u>	<u>4/2/2021</u>
<u>#02</u>	<u>4/13/2021</u>
<u>#03, #04, #05, #06</u>	<u>4/15/2021, 4/15/2021, 4/16/2021, 4/19/2021</u>

The Undersigned agrees, upon receipt of written notice of intent to award the Contract that he will execute, AIA Document 101 "Agreement Between Contractor and Owner" on the standard form issued by the American Institute of Architects in accordance with his bid proposal.

Within 48 hours from when bids are opened the undersigned agrees to submit a list of sub-contractors that they intend to use for the work.

The Undersigned further agrees that if awarded the Contract he can commence work as soon as the Contract is approved and "Written Notice to Proceed" is issued.

Reasonable allowance will be made for delay in progress of work if cause by any act or neglect of the Owner or by any authorized agent of the Owner, by changes ordered in the work, by fire, by unavoidable casualties or causes beyond the Contractor's control

The undersigned agrees that withdrawal of this Bid Proposal, or failure to sign the Agreement or furnish a satisfactory Performance Bond and Payment Bond within time hereinabove set forth shall automatically bar Undersigned from any further consideration and terminate any and all rights Undersigned may have acquired in, by, or through this Bid or Proposal.

No bidder may withdraw their proposal within 60 days after the bid opening.



1 The earliest completion date is very important to the Owner. The Undersigned agrees that the work  
2 can begin immediately and that the entire project be complete by within 520 calendar days  
3 **from receipt of contract.** If the Contractor shall fail to do so, the Contractor agrees to pay the  
4 Owner as liquidated damages and not as a penalty, the sum of **\$500.00** for each and every calendar  
5 day that the Contractor is in default of substantial completion of the work under this Contract.  
6

7  
8 ALLOWANCES

9 Include amount indicated in Section 01 21 00 – ALLOWANCES.

10  
11 Allowance No. 1 – Bidder shall include an allowance for Security: \$40,000.

12  
13 Allowance No. 2 – Bidder shall include an allowance for Construction Staking: \$11,800.

14  
15 Allowance No. 3 – Construction Contingency – \$20,000.  
16

17  
18 TOTAL LUMP SUM BASE BID:

19  
20 5,475,000 5,525,000 Dollars

21  
22 (\$ Five million five hundred twenty five thousand)  
23

24 (The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.)  
25

26  
27 UNIT PRICES

28 Refer to section 31 63 16 – Auger Cast Grout Piles:

29  
30 Unit price for each additional auger cast grout pile beyond that detailed: \$ 1000/pile

31  
32 Unit price for each additional foot of pile depth below that detailed: \$ 18 /foot

33 (Credit price for each foot of pile depth less than that  
34 detailed shall be the same as the unit price for each foot of  
35 additional length.)  
36

37  
38 ALTERNATES

39 Refer to Section 01 23 00 – ALTERNATES, for expanded description of Alternates.

40  
41 Alternate No. 1

42 Delete Snow Melt System.

43  
44 Deduct 69,000 Dollars

45  
46 (\$ Six nine thousand)

1 Alternate No. 2

2 Delete Lightning Protection

3  
4 Deduct 15,000 Dollars

5  
6 (\$ fifteen thousand )

7  
8  
9 VOLUNTARY SUBSTITUTIONS

10	11 <u>Products</u>	12 <u>Manufacturer</u>	13 <u>Adjustment In Bid</u>
14	_____	_____	add / deduct \$ _____
15	_____	_____	add / deduct \$ _____
16	_____	_____	add / deduct \$ _____

17  
18  
19  
20 IN WITNESS WHEREOF THE Undersigned Bidder has caused (his, her, their) signature to be  
21 affixed by a duly authorized (Officer, Partner, Owner), this 20<sup>th</sup> day of April, 2021.

22  
23  
24 FIRM NAME: Meco-Henne Contracting, Inc.

25  
26 MAILING ADDRESS: 4140 South 87th Street  
27  
28 Omaha, NE 68127

29  
30 TELEPHONE: 402-339-8127

31  
32 BY: 

33  
34 Jon Henne Jr.  
35 (Printed name)

36  
37 Vice President  
38 (Title)

**BID BOND**

Conforms with The American Institute of Architects, A.I.A. Document No. A-310

KNOW ALL BY THESE PRESENTS, That we, Meco-Henne Contracting, Inc., 4140 S 87th St, Omaha, NE 68127

\_\_\_\_\_ as Principal, hereinafter called the Principal,  
and the Universal Surety Company

of P.O. Box 80468, Lincoln, NE 68501, a corporation duly organized under the laws of the State of Nebraska, as Surety, hereinafter called the Surety, are held and firmly bound unto

Pottawattamie County Board of Supervisors as Obligee, hereinafter called the Obligee, in the sum of FIVE PERCENT OF AMOUNT BID

Dollars (\$ 5% ), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Pottawattamie County Courthouse Addition

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 20th day of April, 2021

Maggie Moran  
Witness

Al J. Viny  
Witness

Meco-Henne Contracting, Inc. (Seal)  
Principal  
[Signature] V.P.  
Title

Universal Surety Company  
By Maura P. Kelly  
Maura P. Kelly, Attorney-in-Fact



# UNIVERSAL SURETY COMPANY

Lincoln, Nebraska

## POWER OF ATTORNEY

### KNOW ALL MEN BY THESE PRESENTS:

That the **UNIVERSAL SURETY COMPANY**, a corporation of the State of Nebraska having its principal office in the City of Lincoln, Nebraska, pursuant to the following Bylaw, which was adopted by the Board of Directors of the said Company on July 23, 1981, to wit:

"Article V-Section 6. **RESIDENT OFFICERS AND ATTORNEYS-IN-FACT.** The President or any Vice President, acting with any Secretary or Assistant Secretary, shall have the authority to appoint Resident Vice Presidents and Attorneys-In-Fact, with the power and authority to sign, execute, acknowledge and deliver on its behalf, as Surety: Any and all undertakings of suretyship and to affix thereto the corporate seal of the corporation. The President or any Vice President, acting with any Secretary or Assistant Secretary, shall also have the authority to remove and revoke the authority of any such appointee at any time." does hereby make, constitute and appoint

Sharon K. Murray, Firth, Nebraska or David A. Dominiani, Lincoln, Nebraska  
or Maura P. Kelly, Council Bluffs, Iowa or Joan Leu, Ralston, Nebraska or Jacqueline L. Drey  
or Kevin J. Stenger or David G. Jesse, Omaha, Nebraska

its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver for and on its behalf, as Surety:  
Any and all undertakings of suretyship

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its offices in Lincoln, Nebraska, in their own persons.

The following Resolution was adopted at the Regular Meeting of the Board of Directors of the **UNIVERSAL SURETY COMPANY**, held on July 23, 1981:

"RESOLVED, That the signatures of officers of the Company and the seal of the Company may be affixed by facsimile to any Power of Attorney executed in accordance with Article V-Section 6 of the Company Bylaws: and that any such Power of Attorney bearing such facsimile signatures, including the facsimile signature of a certifying Assistant Secretary and facsimile seal shall be valid and binding upon the Company with respect to any bond, undertaking or contract of suretyship to which it is attached."

All authority hereby conferred shall remain in full force and effect until terminated by the Company.

IN WITNESS WHEREOF, **UNIVERSAL SURETY COMPANY** has caused these presents to be signed by its President and its corporate seal to be hereunto affixed this 16th day of February, 2018.

*Carol J. Clark*

UNIVERSAL SURETY COMPANY

*Curt L. Hartter*



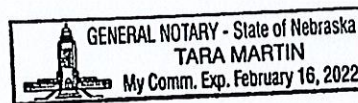
State of Nebraska }  
County of } ss.  
                  }    Lancaster

By

President

On this 16th day of February, 2018, before me personally came Curtis L. Hartter, to me known, who being by me duly sworn, did depose and say that (s)he resides in the County of Lancaster, State of Nebraska; that (s)he is the President of the **UNIVERSAL SURETY COMPANY**, the corporation described in and which executed the above instrument; that (s)he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that (s)he signed (his) (her) name by like order; and that Bylaw, Article V-Section 6, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

*Tara Martin*



My Commission Expires February 16, 2022.

Notary Public

I, Philip C. Abel, Director of **UNIVERSAL SURETY COMPANY**, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said **UNIVERSAL SURETY COMPANY**, which is still in full force and effect.

Signed and sealed at the City of Lincoln, Nebraska this 20th day of April, 2021.

*Philip C. Abel*

Director



**Jason Slack/Director, Buildings and Grounds**

**Discussion and/or decision to approve:  
Certificate of Substantial completion for the  
Courthouse Renovation Project**

# AIA<sup>®</sup> Document G704™ – 2017

## Certificate of Substantial Completion

<b>PROJECT:</b> <i>(name and address)</i> Pottawattamie County, Iowa Courthouse Renovation 227 South 6th Street Council Bluffs, IA.	<b>CONTRACT INFORMATION:</b> Contract For: General Construction  Date: June 23, 2020	<b>CERTIFICATE INFORMATION:</b> Certificate Number: 001  Date: April 19, 2021
<b>OWNER:</b> <i>(name and address)</i> Pottawattamie County Board of Supervisors 227 South 6th Street Council Bluffs, Iowa 51501	<b>ARCHITECT:</b> <i>(name and address)</i> HGM Associates Inc.  640 Fifth Avenue Council Bluffs, Iowa 51501	<b>CONTRACTOR:</b> <i>(name and address)</i> Ronco Construction Company Inc.  1717 North 74th Street Omaha, NE 68114

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.

*(Identify the Work, or portion thereof, that is substantially complete.)*

**ALL WORK.**

HGM Associates Inc. ARCHITECT <i>(Firm Name)</i>	 SIGNATURE	Kimberly Bogatz-AIA, LEED AP BD+C PRINTED NAME AND TITLE	April 7, 2021 DATE OF SUBSTANTIAL COMPLETION
-----------------------------------------------------	------------------------------------------------------------------------------------------------	----------------------------------------------------------------	-------------------------------------------------

### WARRANTIES

The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

*(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)*

### WORK TO BE COMPLETED OR CORRECTED

A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:  
*(Identify the list of Work to be completed or corrected.)*

**INCLUDE BY REFERENCE HGM Punch Lists dated 3/9/2021, 3/17/2021, 4/7/2021 and ETI Punch List dated 4/13/2021.**

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within Thirty (30) days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: \$

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:

*(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)*

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion:



Ronco Construction  
Company Inc.



NATE BURPEE, PM  
PRINTED NAME AND TITLE

04/26/21  
DATE

**CONTRACTOR** (*Firm  
Name*)

SIGNATURE

PRINTED NAME AND TITLE

DATE

Pottawattamie County  
Board of Supervisors

**OWNER** (*Firm Name*)

SIGNATURE

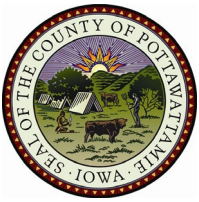
PRINTED NAME AND TITLE

DATE

\*

**Maria Sieck/Public Health Administrator, Jana  
Lemrick/HR Director**

**Discussion and/or decision to approve:  
Job Description for Community Health  
Organizer**



## DIVISION OF PUBLIC HEALTH

# Community Health Organizer

Pottawattamie County, Iowa  
Office of Planning and Development

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**BARGAINING UNIT:** Non-Union

**FSLA STATUS:** Non-Exempt

**REPORTS TO:**

Public Health Administrator

Director of the Office of Planning and Development (Planning Director)

**SUPERVISES:**

None

**PURPOSE OF POSITION:**

Responsible for assessing community health status and needs by reaching out to community partners and residents, researching best practices and local funding sources, and develops community based proposals and reports in order to improve community health.

**ESSENTIAL FUNCTIONS:**

*This description does not include all job duties which may be required and it does not limit the assignment of any additional tasks in this classification. Regular attendance at work report location according to the position's management approved work schedule is essential to this position.*

- Establish and maintain effective working relationships with the general public, community organizations, neighborhoods, and local governmental units to ensure community based cooperative and collaborative health plans.
- Organize and facilitate opportunities (meetings, surveys, etc.) for community participation in the health planning process.
- Develop reports and public information material to inform the community of population health status and community health needs.
- Assist in defining community health goals and objectives that are outcome-based and linked to national and state health goals.
- Assist in the development of grant proposals, division policies, work plans including researching funding sources that support community-based initiatives.
- Facilitate the development of community-based health plans and strategies to improve health status within the community.
- Maintain a file of data and information concerning health resources, demographics, and potential health problems.
- Collect, compile, and interpret information and data regarding community health status, related social, economic, educational, cultural, environmental, and organizational factors that influence the health status of a community.
- Assist in the evaluation of community health programs, services, and contracts.

- As assigned, respond to requests from the community for information concerning community health issues through individual consultations, conferences, meetings, presentations, reports, etc.

#### **MARGINAL FUNCTIONS AND SPECIAL FUNCTIONS:**

- Uses public health surveillance methods to determine health needs of the community.
- Perform other duties as directed or as the situation dictates.

#### **ESSENTIAL KNOWLEDGE, EXPERIENCE AND ABILITY**

- Possess written and verbal skills for effective public communication.
- Ability to organize and deliver public health information to varied audiences, by utilizing verbal, written and visual communication tools/resources.
- Ability to effectively participate, contribute and achieve goals as a member of a work group and multi-functional team(s).
- Ability to use diplomacy and good listening skills in communication with others.
- Possess demonstrated skills in organizing a personal work schedule to manage appointments, set priorities and meet deadlines.
- Ability to develop working relationships with all levels of county staff, medical and para-medical community organizations, Board of Health and the general public.
- Ability to maintain the confidentiality of all departmental and client communications, documents and correspondence.
- Ability to communicate effectively in English, both orally and in writing, and utilize proper grammar, vocabulary, spelling and punctuation.

#### **ESSENTIAL EDUCATION, CERTIFICATION AND /OR LICENSES, MEMBERSHIP:**

- Bachelor's Degree in a Public Health related field or equivalent experience.
- Graduation from high school or GED.
- One(1) to Two(2) years of experience working in a public health environment.
- Computer proficiency in Microsoft Word, Outlook and Excel is required.
- Must possess a valid driver's license at the time of hire and maintain it throughout the course of employment.

#### **ESSENTIAL PHYSICAL DEMANDS AND TYPICAL WORKING CONDITIONS**

- The physical demands and work environment characteristics described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.
- Attendance at work is an essential function of this position. Work is generally performed indoors in an office or group setting and requires some physical activity, including walking, standing, kneeling, bending, crouching, reaching, stooping and climbing. The incumbent is required to frequently sit for extended periods of time and must have sufficient personal mobility to transport themselves to and from a variety of community locations.
- Must have the ability to frequently push, pull and/or lift and carry supplies, and other materials weighing up to 10 pounds, and to occasionally push, pull and/or carry supplies and other materials weighing up to 25 pounds.

- An incumbent must also possess the hand-eye coordination and manual dexterity to operate standard office equipment and to make handwritten notations and which permits moderate to heavy use of a computer keyboard and mouse.
- Must have clarity of speech and hearing which permits effective communication.
- Must have sufficient vision which permits moderate to heavy production and review of a wide variety of documents in both electronic and hard copy forms.
- Working hours may occasionally be required before or after regular business hours.
- The noise level is usually moderate. Work require extensive interaction with the public and may be stressful when dealing with irate citizens and/or meeting deadlines.

**This position is grant funded and based upon the availability of State Funds.**

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EMPLOYEE SIGNATURE

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DATE

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DEPARTMENT HEAD SIGNATURE

---

DATE

**Matt Wyant/Planning and Development  
Director**

**Discussion and/or decision to approve:  
Service Agreement with Field Day  
Development**





## SERVICE AGREEMENT FOR POTTAWATTAMIE COUNTY

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This is an agreement dated 4/9/2021 between FIELD DAY DEVELOPMENT (hereinafter referred to as FIELD DAY) and POTTAWATTAMIE COUNTY (hereinafter referred to as PottCo).

Whereas, PottCo desires to engage a consultant to build a new health department building;

Whereas, FIELD DAY agrees to provide consulting services to PottCo.

NOW, THEREFORE, in consideration of the above premises and mutual covenants and agreements contained herein, the parties agree as follows:

**ARTICLE 1. TERM OF CONTRACT** This agreement will become effective on 04/19/2021 until project completion unless renegotiated and mutually agreed to, in writing, between the parties.

**ARTICLE 2. INDEPENDENT STATUS OF FIELD DAY** The parties understand and agree that FIELD DAY shall serve as an independent contractor and not as an employee of PottCo. FIELD DAY shall determine the method, details and means of providing its services under this agreement. FIELD DAY agrees to pay all federal, state and local taxes, licenses, and fees levied or assessed on FIELD DAY in connection with or incident to the services provided under this agreement by any governmental agency, including but not limited to unemployment compensation insurance, social security, or any other state or federal taxes upon the wages or salaries paid by FIELD DAY, its agents, employees, and representatives. FIELD DAY agrees to require the same agreements and be liable for any breach of such agreements by any of its Subcontractors.

FIELD DAY agrees to reimburse PottCo or its members and volunteers on demand for all such taxes or governmental charges, local, state and federal, which PottCo or its members may be required or deem it necessary to pay because of employees of FIELD DAY or its Subcontractors. FIELD DAY agrees to furnish PottCo with the information required to enable it to make necessary reports to pay such taxes or charges. At its election, PottCo is authorized to deduct all sums so paid for such taxes and government charges from such amounts as may be or become due FIELD DAY hereunder. FIELD DAY understands and agrees to provide PottCo with a completed and signed Internal Revenue Form W9 before commencement of the services to be provided herein.

FIELD DAY agrees to pay all claims for labor, materials, services and supplies furnished by FIELD DAY hereunder and agrees to allow no lien or charge to be fixed upon property or other property owned by PottCo or its individual members and volunteers. FIELD DAY agrees to indemnify, protect and hold PottCo harmless from and against all such reasonable claims, charges, and liens, including any attorney's fees and expenses. If FIELD DAY shall fail or refuse to pay any claim or indebtedness incurred by FIELD DAY in connection with the services hereunder, it is agreed PottCo or its individual members shall have the right, but not the obligation, to pay any such claim or indebtedness out of any money due or to become due to FIELD DAY hereunder.

**ARTICLE 3. SERVICES TO BE PERFORMED BY FIELD DAY** FIELD DAY will perform project management and development services, with support from PottCo, at:

- Principal at \$200
- Senior Project Manager at \$165
- Project Manager at \$150
- Administration at \$85

FIELD DAY shall not be responsible for inaccurate, misleading and/or false information provided by PottCo during services performed. FIELD DAY is not held liable or responsible for projects that are not funded if duties are performed within contract parameters.

**ARTICLE 4. PottCo RESPONSIBILITIES** PottCo shall provide FIELD DAY with requested information to avoid delaying services performed by FIELD DAY in conjunction with the terms and conditions of this Agreement. Therefore, it shall be a breach of Agreement if PottCo fails or delays the timely submission of requested documents and information.

**ARTICLE 5. COMPENSATION** In consideration for the services, duties, and other obligations to be performed to the reasonable satisfaction of PottCo by FIELD DAY as described herein, PottCo agrees to pay FIELD DAY during periods of service agreement according to the terms of payment set forth below.

Terms of Payment: Unless otherwise agreed or negotiated in writing, FIELD DAY shall be paid the full amount, less any reimbursable expenses, stated in Article 3 above upon receipt of each invoice. Invoicing will be submitted on a monthly basis and will only include services provided during the 30/31 days prior. All invoices will include an itemization of work.

FIELD DAY will be reimbursed for reasonable out-of-pocket expenses. Expenses over \$50.00 will be approved, in writing, in advance by PottCo. All reimbursable expenses will be itemized, fully documented with back-up receipts and billed directly to PottCo on a monthly basis.

**ARTICLE 6. OBLIGATIONS OF POTTCo** PottCo agrees to consider all reasonable requests of FIELD DAY necessary to the performance of FIELD DAY'S duties under this agreement. All documents and any information collected by FIELD DAY related to PottCo shall remain under the control of PottCo and not be distributed or used without written authorization of PottCo. Any information provided to FIELD DAY shall remain confidential both during and after the term of this agreement.

**ARTICLE 7. OWNERSHIP OF WORK PRODUCT** PottCo shall have full and complete ownership of FIELD DAY'S entire work product related to PottCo. FIELD DAY shall maintain the right to photocopy, at its sole expense, and maintain records of all work-product for its own records.

**ARTICLE 8. TERMINATION OF AGREEMENT DEFAULT** If either Party to this agreement defaults in the performance of this agreement or materially breaches any of its provisions, then the non-defaulting party may terminate this agreement by giving written notification to the other Party. For the purposes of this agreement, a material breach shall include, but not be limited to, the following:

FIELD DAY DEFAULTS – Failure to perform services as described in this agreement; failure to perform services in a timely and consistent fashion; and failure to maintain confidentiality of information and the PottCo records collected during work under this agreement.

PottCo DEFAULTS – PottCo failure to pay FIELD DAY any or all the compensation set forth in this agreement on the date due. This provision does not in any way abridge FIELD DAY's legal remedies to collect any payments due under the terms of this agreement.

NO DEFAULT TERMINATION – PottCo or FIELD DAY retains the right to terminate this contract at any time, for any reason, upon 30 days written notice. PottCo will be obligated to reimburse any PottCo-approved expenses incurred through the time of termination of the agreement.

**ARTICLE 9. INSURANCE** – FIELD DAY shall maintain at its sole cost and expense during the Term of this Agreement, with insurers and licensed to do business in Nebraska, a minimum insurance coverage.

**ARTICLE 10. INDEMNIFICATION** – FIELD DAY shall indemnify and hold harmless PottCo or its individual employees, officers, directors, members and volunteers from and against, and shall assume full

responsibility for payment of all wages, state or federal payroll, social security, income or self-employment taxes, with respect to FIELD DAY'S performance of this Agreement. To the extent permitted by law, PottCo shall indemnify and hold harmless FIELD DAY from and against any claims, suits, action, liability or cost of any kind (including attorney's fees) as a result of PottCo's performance under this Agreement, but only to the extent caused by or arising out of the negligent acts or omissions of PottCo. FIELD DAY shall indemnify and hold harmless PottCo and its individual employees, officers, directors, members and volunteers from and against any reasonable claims, suits, action, liability or cost of any kind (including attorney's fees) as a result of FIELD DAY'S Services in this Agreement rendered hereunder, unless it is determined that such claims, suits, action, liability or cost was caused by a result from the breach by PottCo of this Agreement or from PottCo or its individual members and volunteers' negligence or willful misconduct.

**ARTICLE 11. GENERAL PROVISIONS NOTICES** Any notices given hereunder by either party to the other party may be affected by personal delivery in writing or by mail, registered or certified, postage prepared with return receipt requested. Mailed notices shall be addressed as follows:

Andrea Kathol  
Owner, Field Day Development  
1111 N. 13<sup>th</sup> St #103, Omaha, NE 68102  
402-215-6759

Matt Wyant  
Planning and Development Director, Pottawattamie County  
223 South 6<sup>th</sup> Street, Council Bluffs, IA 51501  
712-328-5792

Each party may change its address listed above by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two days after mailing.

**GOVERNING LAW** This agreement will be governed by and construed in accordance with the laws of the State of Nebraska. FIELD DAY and PottCo respectively agree to comply with all laws, rules, and regulations, federal, state, and municipal, and to obtain all licenses or permits which are now or may become applicable to operations covered by this agreement or arising out of the performance of the services to be provided hereunder.

**ASSIGNMENT** Neither this agreement nor any of the duties or obligations under this agreement may be assigned by FIELD DAY without the prior written consent of PottCo, which PottCo may withhold at its absolute and sole discretion.

**RECORDS** All records, sketches, drawings, prints, computations, charts, reports and other documentation made during services performed hereunder, or in anticipation of the consulting work to be performed regarding this Agreement, shall at all times be and remain sole property of PottCo. FIELD DAY shall turn over to PottCo all copies of such documentation on request by PottCo.

**FORCE MAJEURE** Neither Party shall be liable to the other for any delays or damages or for any failure to act due, occasioned, or caused by reason of federal or state laws or the rules, regulations, or orders of any public body or official purporting to exercise authority or control respecting the operations covered hereby, including the use of tools and equipment, or due, occasioned, or caused by strikes, action of the elements, or causes beyond the control of the parties affected hereby, and delays due to the above causes, or any of them, shall not be deemed to be a breach of or failure to perform under this agreement.

**CONFIDENTIAL INFORMATION** Information obtained by FIELD DAY in the conduct of servicing operations hereunder, shall be confidential and shall not be divulged by FIELD DAY, its employees, agents or

Subcontractors to any person, firm, or corporation other than to PottCo director, designated representative or others directed by PottCo Governing Board.

The confidential obligation assumed by FIELD DAY under this paragraph shall not apply to any information disclosed to FIELD DAY in accordance with this paragraph which FIELD DAY can show by reasonable proof (a) to have been in the public domain at the time of receipt by FIELD DAY; or (b) to have become generally known to the public through no fault of FIELD DAY following its receipt by FIELD DAY; or (c) to have been known by FIELD DAY prior to its receipt by FIELD DAY; or (d) to have been disclosed to FIELD DAY by a third party on a non-confidential basis, who has no legal duty to PottCo or its individual members and volunteers to maintain the information in confidence.

ENTIRE AGREEMENT OF THE PARTIES This Agreement, if signed by the parties, becomes the full and complete agreement between parties. Any agreements, written or oral, that have been made prior to the signing of this agreement shall be null and void. This agreement may be amended in writing with the authorized signature of the parties. If all the terms of this contract are satisfactory, please sign below.

Read and Agreed to by:

---

Representative Signature – FIELD DAY DEVELOPMENT

---

Printed Name of Representative

Date

---

Representative Signature – POTTAWATTAMIE COUNTY

---

Printed Name of Representative

Date

**Other Business**

**Jana Lemrick/Director, Human Resources and  
Heather Shafer/HR Assistant**

**Discussion and/or decision to approve:  
E-Verify Memorandum of Understanding for  
Employer Access Portal, between the  
Department of Homeland Security (DHS),  
Pottawattamie County, and E-Verify.**



## POTTAWATTAMIE COUNTY DEPARTMENT OF HUMAN RESOURCES

227 S 6<sup>th</sup> Street, COUNCIL BLUFFS, IA 51501

**Jana Lemrick**  
Human Resources Director  
Phone: (712) 328-4777  
Fax: (712) 328-5770

E-mail [jana.lemrick@pottcounty-ia.gov](mailto:jana.lemrick@pottcounty-ia.gov)

**Heather Shafer**  
Human Resources Assistant  
Phone: (712) 328-5799  
Fax: (712) 328-5770

E-mail [heather.shafer@pottcounty-ia.gov](mailto:heather.shafer@pottcounty-ia.gov)

**Garfield Coleman**  
Risk Manager  
Phone: (712) 328-4784  
Fax: (712) 328-5769

E-mail [garfield.coleman@pottcounty-ia.gov](mailto:garfield.coleman@pottcounty-ia.gov)

Board of Supervisors,

On behalf of Human Resources, we are requesting that Pottawattamie County obtain an 'Employer Access Portal', through E-Verify. As you know, E-Verify is a United States Department of Homeland Security website that allows businesses to determine the eligibility of their employees, both U.S. and foreign citizens, to work in the United States.

The County currently has an E-Verify agreement for 'Employers using a Web Services E-Verify Employer Agent', which is through our Employee Applicant Tracking & Onboarding System, Neogov, and was established in 2017. It would be efficient, and advantageous for the County to have E-Verify through Neogov, as well as the 'Employer Access Portal', as there are scenarios in which we're unable to verify employment through Neogov. I.e. a chosen new employee applied with a paper application, and doesn't have an email address. There may also be scenarios in which we may need to re-verify employment for an employee, and the E-Verify within Neogov does not allow this feature.

With approval from the Board to request and obtain the 'Employer Access Portal', Human Resources would print a Memorandum of Understanding (included), and would need 1 Board Member's signature.

Thank You for considering!

Heather Shafer, HR Assistant & Jana Lemrick, HR Director





**THE E-VERIFY  
MEMORANDUM OF UNDERSTANDING  
FOR EMPLOYERS**

**ARTICLE I**

**PURPOSE AND AUTHORITY**

The parties to this agreement are the Department of Homeland Security (DHS) and the \_\_\_\_\_ (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

**ARTICLE II**

**RESPONSIBILITIES**

**A. RESPONSIBILITIES OF THE EMPLOYER**

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
  - a. Notice of E-Verify Participation
  - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.
4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.
5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.
  - a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer



Representative from continued use of E-Verify.

6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.

Note: Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.

7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures.

a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.



12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at [E-Verify@uscis.dhs.gov](mailto:E-Verify@uscis.dhs.gov). Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.



18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that E-Verify trademarks and logos may be used only under license by DHS/USCIS (see M-795 (Web)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

## **B. RESPONSIBILITIES OF FEDERAL CONTRACTORS**

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only



verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin E-Verify verification of all existing employees within 180 days after the election.

e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:

- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
- ii. The employee's work authorization has not expired, and
- iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:

- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
- ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
- iii. The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

### **C. RESPONSIBILITIES OF SSA**

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.

2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.



4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

Note: If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

#### **D. RESPONSIBILITIES OF DHS**

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:

- a. Automated verification checks on alien employees by electronic means, and
- b. Photo verification checks (when available) on employees.

2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.

4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.

5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.

7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.

8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.

9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

### **ARTICLE III**

#### **REFERRAL OF INDIVIDUALS TO SSA AND DHS**

##### **A. REFERRAL TO SSA**



1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.
2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.
4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.
6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

## **B. REFERRAL TO DHS**

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.
2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.
4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.
5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.
6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:
  - a. Scanning and uploading the document, or
  - b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).



7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.

8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

#### **ARTICLE IV**

#### **SERVICE PROVISIONS**

##### **A. NO SERVICE FEES**

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

#### **ARTICLE V**

#### **MODIFICATION AND TERMINATION**

##### **A. MODIFICATION**

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.

2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.

##### **B. TERMINATION**

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.

2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.

3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

#### **ARTICLE VI**

## PARTIES

A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.

D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.

X Signature:

X Date:

X Title

**Jana Lemrick/Director, Human Resources and  
Heather Shafer/HR Assistant**

**Discussion and/or decision to approve:  
Change to Employee Handbook Policy #403,  
Insurance/Retirement Programs**

Title: Insurance/Retirement Programs  
Policy Number: 403  
Effective Date: July 1, 2009  
Revision Date: July 1, 2018 (Approved June 12, 2018)  
Authorized by: Board of Supervisors

Policy

It is the policy of Pottawattamie County to provide its employees with various insurance and retirement benefits. Information and summaries explaining these benefit plans are furnished to employees participating in the plans (plan participants) and beneficiaries as necessary. The County reserves the right at any time to modify, amend, or terminate its employee benefit plans as they apply to all current, former, and retired employees.

Comments:

- (1) The County offers certain benefits to eligible employees, including health, dental, life and disability insurance and pension/retirement plans. An employee becomes eligible for insurance benefits the first of the month following 30 continuous days of employment.
- (2) All insurance benefits provided by the County are described in official documents that are kept on file in the Auditor's Office/Payroll Division. These documents are available electronically on the county's intranet. Please contact payroll if you would like an individual copy of these documents. These documents are the only official and binding materials concerning the County's insurance benefits. Refer to these documents if you have questions or disputes.
- (3) The Auditor's office, in conjunction with the Human Resources department, is responsible for all communications and disclosures concerning County benefits and for compliance with all applicable laws and regulations.
- (4) Each employee must designate a beneficiary under the County's group insurance and retirement plans. The designation must be made in writing and on a form provided by the insurance provider. It is the employee's responsibility to maintain accurate contact information and beneficiary designations. Contact the Auditor's Office/Payroll Division in order to complete the necessary paperwork should changes occur that would affect eligibility status or beneficiary designation.
- (5) Employee contributions to benefit plans will normally be deducted from the employee's paycheck. Employee contributions to, health and dental insurance are automatically deducted from the employee's paycheck before income tax (pre-tax) through the County's flexible spending account.

The Consolidated Omnibus Budget Reconciliation Act, as amended, (COBRA) provides eligible employees, retirees, spouses, former spouses, and dependent children the right to temporarily continue their health and dental coverage at group rates. This coverage, however, is only available when coverage is lost due to certain specific qualifying life events (life event). COBRA participants pay the entire health premium including contributions previously paid by the County.

Employees, spouses, and dependents covered by the County's health and dental benefit plans will be notified of their COBRA rights, in certain specified situations including voluntary or involuntary termination of employment (other than for gross misconduct), reduction in hours of employment or death of the employee.

In the event of a legal separation, divorce or a dependent child's losing eligibility for coverage; the employee must provide written notification to the Auditor's Office/Payroll Division within sixty (60) days after the life event occurs in order to be eligible for COBRA.

When necessary, employees will be provided with a certificate of prior health coverage when they lose coverage under the county's health insurance plan.

- (7) Employees of Pottawattamie County are required to participate in the Iowa Public Employee's Retirement System (IPERS). Contributions to IPERS are mandated by Iowa law. In addition to the mandatory IPERS retirement plan, Pottawattamie County employees may participate in a voluntary IRC§457 Deferred Compensation Plan.



## **INSURANCE & RETIREMENT PROGRAM**

### **HEALTH INSURANCE**

#### **Iowa Governmental Health Care Plan (I.G.H.C.P.)**

Pottawattamie County is a member of the Iowa Governmental Health Care Plan (IGHCP) trust. IGHCP utilizes Wellmark (Blue Cross Blue Shield) as the insurance carrier. Health insurance for new employees will become effective on the first of the month, following 30 days of continuous employment.

Full-time employees (those working 40 or more hours per week) electing to participate in the County's health insurance program shall contribute a percentage of the monthly premium for single and family coverage, as determined by the Board of Supervisors each year.

Part-time and variable hour employees who work an average of thirty (30) hours or more per week may be eligible to participate in the County's health insurance program. The County will contribute an amount as required by law toward the cost of a single premium for those employees working less than 40-hours per week.

#### **Open Enrollment or Life Events**

Employees may make changes to their health insurance coverage during the annual Open Enrollment period (for a July 1<sup>st</sup> effective date). Employees may also make changes to their health insurance coverage if the employee experiences a life event such as marriage, birth/adoption of child, spouse losing coverage and other similar qualifying events. If a life event occurs, the employee must notify payroll within 30 days of the qualifying event. If the employee fails to make timely notification, the affected person may not enroll until the next annual Open Enrollment period.

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#### **Death of an Employee**

When an employee dies while on duty and the death is an event for which benefits are payable under Iowa Worker's Compensation laws, the covered surviving spouse or covered surviving dependent children may still be eligible for coverage. If eligible, the county will contribute an amount equal to the active full-time employee rate for a period not to exceed three (3) years following the date of death. If the covered surviving spouse or covered surviving dependent children remain eligible for coverage under the county's group health plan following this three (3) year period, they may continue on the health plan by paying the premium cost as determined by the county. The Board of Supervisors will review eligibility for a covered surviving spouse or covered surviving

dependent children on a case by case basis and any exceptions made must be authorized by the Board of Supervisors.

**Health Insurance for Retirees:**

Upon retirement, employees may, if eligible, continue to receive health insurance coverage provided under an existing plan. In order to receive this coverage, the employee must:

- Meet the normal retirement formula as prescribed by IPERS and;
- Must have fifteen (15) years of continuous service with Pottawattamie County and;
- Must be at least fifty-five (55) years of age and not yet sixty-five (65) years of age and;
- Must be covered by the County's primary health insurance program prior to the time of retirement and;
- Must pay the entire premium cost as determined by the County.

Health insurance coverage for retiree's shall cease upon the retiree reaching the age of sixty-five (65) or becoming eligible for Medicare benefits.

**WELLNESS PROGRAM**

Pottawattamie County offers a Wellness Program for their employees.. The Wellness Program is a **voluntary** program and those eligible to participate include:

1. Full-time employees (working 40 or more hours per week).
2. Retirees who participate in the retiree health insurance.
3. Part-time employees who are eligible to participate in the county's health insurance program.
4. Spouses are eligible if they are enrolled in the county's health insurance plan. Spouses are eligible to participate in the program, but are only eligible to receive the discount if the employee also participates in the program.

Employees who enroll in the Wellness Program and who successfully complete the program requirements will be eligible for a \$30 per month discount on their health insurance premium after any designated waiting period. For more information on the Wellness program, please contact Human Resources.

**DENTAL INSURANCE**

Full-time employees are eligible to participate in the County's dental plan. Pottawattamie County provides, at no cost to the employee, a single dental insurance policy. Employees electing family dental coverage shall contribute a percentage of the monthly premium for single and family coverage, as determined by the Board of Supervisors each year.



There is no annual Open Enrollment for the dental plan. Late entrants will be subject to a waiting period (as determined by the insurance provider) unless the employee experiences a qualifying life event, such as marriage, birth/adoption of child, spouse losing coverage and other similar events. If a life event occurs, the employee must notify the payroll department within 30 days of the life event or the affected person(s) will be subject to a waiting period during which time benefits may be excluded.

### **LIFE INSURANCE**

Pottawattamie County provides a Group Term Life Insurance Plan in the amount of twenty-five thousand (\$25,000) dollars, with twenty-five thousand (\$25,000) dollars of additional accidental death and dismemberment insurance to full-time employees, those working 40 or more hours per week. There is no cost to the employee for this coverage. Employees are eligible to purchase additional voluntary life insurance at their expense through Pottawattamie County.

### **LONG TERM DISABILITY**

Pottawattamie County provides a Long Term Disability Insurance Plan, with a one-hundred and eighty (180) calendar day waiting period to full-time employees, those working 40 or more hours per week. There is no cost to the employee for this coverage.

**Termination of Insurance Coverage:** Insurance coverage provided by Pottawattamie County will end on the last day of the month in which the employee separates from employment. Insurance premiums are paid one month in advance and are deducted from an employee's paycheck accordingly. Employees will be reimbursed for any premium amount which was deducted from their paycheck and not utilized.

403:5

### **IOWA PUBLIC EMPLOYEES RETIREMENT SYSTEM (IPERS)**

Full-time Pottawattamie County employees are required to participate in the Iowa Public Employee's Retirement System (IPERS). Contributions to IPERS are mandated by the Code of Iowa. Please visit the IPERS website for contribution rates:eP

[www.ipers.org](http://www.ipers.org)

### **VOLUNTARY VISION PLAN**

Full-time employees (those working 40 or more hours per week) are eligible to participate in the county's voluntary vision plan. The employee is responsible for 100% of the premium for single and/or family coverage.

### **MISCELLANEOUS BENEFITS**

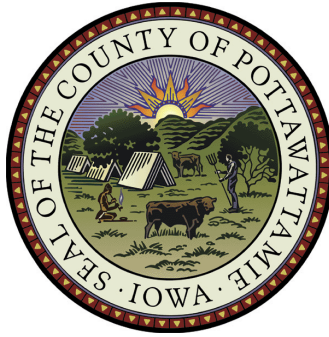
Employee Handbook/Insurance/Retirement Programs

Full-time employees are eligible to participate in the County's flexible medical spending account, voluntary critical illness/accident insurance policy, , and 457 Deferred Compensation plans. For more information on these plans and any of the plans listed above, please contact the Auditor's Office/Payroll Division.

**Jana Lemrick/Director, Human Resources and  
Heather Shafer/HR Assistant**

**Discussion and/or decision regarding  
employee's percentage of benefit  
contributions.**

**POTTAWATTAMIE COUNTY**  
**DEPARTMENT OF HUMAN RESOURCES**  
227 S 6<sup>th</sup> Street  
COUNCIL BLUFFS, IOWA 51501



**Jana Lemrick**  
**Human Resources Director**  
Phone (712) 328-4777  
FAX (712) 328-5770  
E-mail [jana.lemrick@pottcounty.com](mailto:jana.lemrick@pottcounty.com)

## **MEMORANDUM**

**TO:** Board of Supervisors

**FROM:** Jana Lemrick, Pottawattamie County Human Resources

**SUBJECT:** Employee Contribution to Health Benefits

**DATE:** April 30, 2021

Currently, employees contribute 10% of the monthly premium for single and family medical coverage while the County contributes 90% of the monthly premium. It is my recommendation and request that the employee contribution be increased to 11% beginning July 1, 2021.

**Received/Filed**