

**BOARD OF REGENTS**  
**STATE OF IOWA**

**00 72 13 GENERAL CONDITIONS**

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**ARTICLE 1 AGREEMENT**

- 1.1 The Form of Agreement is included in Section 00 52 13 Form of Agreement Between OWNER and CONSTRUCTOR.

**ARTICLE 2 GENERAL PROVISIONS**

- 2.1 PARTIES' RELATIONSHIP AND ETHICS The Parties each agree to proceed with the Project on the basis of mutual trust, good faith, and fair dealing.

2.1.1 The CONSTRUCTOR shall furnish construction administration and management services and use the CONSTRUCTOR's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The CONSTRUCTOR represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.3 Neither the CONSTRUCTOR nor any of its agents or employees shall act on behalf of or in the name of the OWNER except as provided in the Agreement Between OWNER and CONSTRUCTOR or unless authorized in writing by the OWNER's Representative.

2.1.4. The CONSTRUCTOR represents that it possesses the skill, training, experience, personnel and resources to complete the Work: (a) in a workmanlike fashion; (b) in an orderly, diligent and timely

fashion; and (c) in accordance with the Contract Documents and any standards or procedures incorporated therein by reference.

All Work shall be executed in accordance with the manufacturer's most recent recommendations unless otherwise specified or permitted by the DESIGN PROFESSIONAL. A sufficient force of competent workmen, foremen, and superintendents shall be employed at all times to permit the work to be diligently and continuously pursued in an orderly fashion until completion.

The Work required by the Contract Documents including without limitation, all construction details, construction means, use of material, selection of equipment and requirements of product manufacturers shall be performed in a manner that is consistent with (a) good and sound practices within construction industry; (b) generally prevailing and accepted industry standards applicable to the Work; (c) the requirements of any warranties applicable to the Work; and (d) all laws, ordinances, regulations, rules and orders to the extent that they bear upon the CONSTRUCTOR's performance of the Work.

2.2 ETHICS The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Subcontractors, or others for whom they may be liable, to secure preferential treatment.

2.3 DESIGN PROFESSIONAL The OWNER, through its DESIGN PROFESSIONAL, shall provide all architectural and engineering design services necessary for the completion of the Work, except for items indicated in the SPECIFICATIONS that require additional design services for implementation within the context of this Project, and all design services required in order to carry out CONSTRUCTOR's responsibilities for construction means, methods, techniques, sequences and procedures. The CONSTRUCTOR shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided in section 3.15.

2.3.1 OWNERSHIP OF DOCUMENTS. All DRAWINGS, SPECIFICATIONS, and SUBMITTALS required pursuant to section 3.14, and any other document or submission required under this Agreement or prepared at any time in connection with the Project, whether in written or electronic form, are and shall remain the OWNER's sole property. The OWNER's interest in and right to any documents shall not be conditioned upon payment of all or any portion of the Contract price. These documents shall not be reproduced or used by the CONTRACTOR for any purpose except as (a) required for the performance of the services under this Agreement, or (b) as specifically authorized by the OWNER.

## 2.4 DEFINITIONS

2.4.1 "Agreement" means the Agreement Between OWNER and CONSTRUCTOR, as modified, upon its execution. The Form of Agreement Between OWNER and CONSTRUCTOR is included in Section 00 52 13.

2.4.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.3 "Change Order" is a written order signed by the OWNER and the CONSTRUCTOR after execution of this Agreement, indicating changes in the scope of the Work, the Contract Price, or Contract Time, including substitutions proposed by the CONSTRUCTOR and accepted by the OWNER.

2.4.4 "Contract Documents" consist of the Agreement, General Conditions, Institution Requirements, Project Requirements, DRAWINGS, SPECIFICATIONS, addenda issued and acknowledged prior to execution of this Agreement, information furnished by the OWNER pursuant to section 4.2, and modifications issued in accordance with this Agreement.

2.4.4.1 "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. DRAWINGS are intended to show general arrangements, design, and dimensions of work and are partly diagrammatic.

2.4.4.2 "SPECIFICATIONS" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

2.4.5 "Contract Price" is the amount indicated in the Agreement

2.4.6 "Contract Time" is the period between the Date of Commencement and Final Completion.

2.4.7 "CONSTRUCTOR" is the person or entity identified in the Agreement and includes the CONSTRUCTOR's Representative. The terms "CONTRACTOR" or "CONSTRUCTOR" where used in the Contract Documents should be considered to be synonymous.

2.4.8 "Cost of the Work" means the costs and discounts specified in article 8.3.1.3.

2.4.9 "Date of Commencement" is as set forth in section 6.1.

2.4.10 "Day" means a calendar day.

2.4.11 "Defective Work" is any portion of the Work that does not conform to the requirements of the Contract Documents.

2.4.12 "DESIGN PROFESSIONAL" means the licensed architect or engineer and its consultants, retained by the OWNER to perform design services for the Project.

2.4.13 "Final Completion" occurs on the date when the CONSTRUCTOR's obligations under the Agreement are complete and accepted by the OWNER. This date shall be confirmed by a Certificate of Final Completion signed by the OWNER.

2.4.14 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the CONSTRUCTOR must comply that are enacted as of the Agreement date.

2.4.15 "Interim Directed Change" is a change to the Work directed by the OWNER pursuant to section 8.2.

2.4.16 "Material Supplier" is a person or entity retained by the CONSTRUCTOR to provide material or equipment for the Work.

2.4.17 "Others" means other contractors/constructors, material suppliers, and persons at the Worksites who are not employed by the CONSTRUCTOR or Subcontractors.

2.4.18 "Overhead" means (a) payroll costs and other compensation of CONSTRUCTOR employees in the CONSTRUCTOR's principal and branch offices, including, but not limited to, estimators, project managers, assistant project managers, and project engineers; (b) general and

administrative expenses of the CONSTRUCTOR's principal and branch offices including charges against the CONSTRUCTOR for delinquent payments, and (c) the CONSTRUCTOR's capital expenses, including interest on capital used for the Work.

2.4.19 "OWNER" is the person or entity identified in the Agreement, and includes the OWNER's Representative.

2.4.20 "Parties" are collectively the OWNER and the CONSTRUCTOR.

2.4.21 "Profit" is a financial gain or total revenue less total expenses.

2.4.22 "Project," as identified in the Agreement, is the building, facility, or other improvements for which the CONSTRUCTOR is to perform Work under this Agreement. It may also include construction by the OWNER or Others.

2.4.23 "Schedule of the Work" is the document prepared by the CONSTRUCTOR that specifies the dates on which the CONSTRUCTOR plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the OWNER.

2.4.24 "Subcontractor" is a person or entity retained by the CONSTRUCTOR as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the DESIGN PROFESSIONAL or Others.

2.4.25 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the OWNER may occupy or utilize the Project, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the CONSTRUCTOR's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the OWNER.

2.4.26 "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform a portion of the Subcontractor's Work.

2.4.27 "Terrorism" means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.28 "Work" means the construction and services necessary or incidental to fulfill the CONSTRUCTOR's obligations for the Project in conformance with the Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the OWNER or Others.

2.4.29 "Worksite" means the geographical area of the Project location where the Work is to be performed.

## ARTICLE 3 CONSTRUCTOR'S RESPONSIBILITIES

### 3.1 GENERAL RESPONSIBILITIES

- 3.1.1 The CONSTRUCTOR shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents. Any additional facilities or areas required for construction operations or storage of materials that are outside of the areas designated in the Contract Documents shall be provided by the CONSTRUCTOR at no additional cost to the OWNER.
- 3.1.2 The CONSTRUCTOR shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the CONSTRUCTOR shall not be liable to the OWNER for damages resulting from compliance with such instructions unless the CONSTRUCTOR recognized and failed to timely report to the OWNER any error, inconsistency, omission or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences or procedures.
- 3.1.3 The CONSTRUCTOR shall perform Work only within locations allowed by the Contract Documents, Laws, and applicable permits.

### 3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

- 3.2.1 The OWNER may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.
- 3.2.2 If the OWNER elects to perform work at the Worksite directly or by Others, the CONSTRUCTOR and the OWNER shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The OWNER shall require each separate contractor to cooperate with the CONSTRUCTOR and assist with the coordination of activities and the review of construction schedules and operations. The Contract Price and Contract Time shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The CONSTRUCTOR, the OWNER, and Others shall adhere to the revised construction schedule.
- 3.2.3 With regard to the work of the OWNER and Others, the CONSTRUCTOR shall (a) proceed with the Work in a manner that does not hinder, delay or interfere with the work of the OWNER or Others or cause the work of the OWNER or Others to become defective, (b) afford the OWNER or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the CONSTRUCTOR's Work with theirs.
- 3.2.4 Before proceeding with any portion of the Work affected by the construction or operations of the OWNER or Others, the CONSTRUCTOR shall give the OWNER prompt written notification of any defects or delays the CONSTRUCTOR discovers in or resulting from the work of the OWNER or Others which will prevent the proper execution of the Work. The CONSTRUCTOR's obligations in this subsection do not create a responsibility for the work of the OWNER or Others, but are for the purpose of facilitating the Work. If the CONSTRUCTOR does not notify the OWNER of defects or delays interfering with the performance of the Work, the CONSTRUCTOR acknowledges that the work of the OWNER or Others has not contributed to delays and is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the CONSTRUCTOR of defects or delays, the OWNER shall promptly inform the CONSTRUCTOR what action, if any, the CONSTRUCTOR shall take with regard to the defects or delays.

### 3.3 RESPONSIBILITY FOR PERFORMANCE

- 3.3.1 Prior to commencing the Work the CONSTRUCTOR shall examine and compare the DRAWINGS and SPECIFICATIONS with information furnished by the OWNER that are Contract Documents, relevant field measurements made by the CONSTRUCTOR, and any visible conditions at the Worksite affecting the Work.
- 3.3.2 Should the CONSTRUCTOR discover any errors, omissions or inconsistencies in the Contract Documents, the CONSTRUCTOR shall promptly report them to the OWNER. It is recognized, however, that the CONSTRUCTOR is not acting in the capacity of a licensed design professional, and that the CONSTRUCTOR's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations. Following receipt of written notice from the CONSTRUCTOR of defects, the OWNER shall promptly inform the CONSTRUCTOR what action, if any, the CONSTRUCTOR shall take with regard to the defects.
- 3.3.3 The CONSTRUCTOR shall have no liability for errors, omissions or inconsistencies discovered under this section unless the CONSTRUCTOR knowingly fails to report a recognized problem to the OWNER.
- 3.3.4 The CONSTRUCTOR may be entitled to additional costs or time because of clarifications or instructions arising out of the CONSTRUCTOR's reports described in this section.
- 3.3.5 Nothing in this section shall relieve the CONSTRUCTOR of responsibility for its own errors, inconsistencies, and omissions.

#### 3.4 CONSTRUCTION PERSONNEL AND SUPERVISION

- 3.4.1 The CONSTRUCTOR shall provide competent supervision at all times when the Work is being performed. Before commencing the Work, the CONSTRUCTOR shall notify the OWNER in writing of the name and qualifications of its proposed superintendent(s) and project manager so the OWNER may review the individual's qualifications. If, for reasonable cause, the OWNER refuses to approve the individual, or withdraws its approval after once giving it, the CONSTRUCTOR shall name a different superintendent or project manager for the OWNER's review. Any disapproved superintendent or project manager shall not perform in that capacity thereafter at the Worksite. The project manager and superintendent shall not be changed without prior consent of the OWNER unless they cease to be in the employ of the CONSTRUCTOR. The superintendent shall be in attendance at the Project site during performance of the Work and shall represent the CONSTRUCTOR.
- 3.4.2 The CONSTRUCTOR shall be responsible to the OWNER for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the CONSTRUCTOR or any of its Subcontractors.
- 3.4.3 The CONSTRUCTOR shall permit only qualified persons to perform the Work. The CONSTRUCTOR shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the OWNER determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, the CONSTRUCTOR shall immediately reassign the person upon receipt of the OWNER's written notice to do so.
- 3.4.3.1 The OWNER will not tolerate sexual harassment. Sexual harassment is a form of sex discrimination as defined in the Code of Iowa and is a violation of both state and federal law.

3.4.4 CONSTRUCTOR'S REPRESENTATIVE The CONSTRUCTOR's authorized representative shall be the CONSTRUCTOR'S project manager unless otherwise identified in writing to the OWNER. The CONSTRUCTOR's Representative shall possess full authority to receive instructions from the OWNER, to act on those instructions, to execute all documents related to this Agreement (including, but not limited to Change Orders), and to legally bind the CONSTRUCTOR to any document so executed. If the CONSTRUCTOR changes its representative or their authority, the CONSTRUCTOR shall immediately notify the OWNER in writing.

3.5 WORKMANSHIP The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

3.6 MATERIALS FURNISHED BY THE OWNER OR OTHERS If the Work includes installation of materials or equipment furnished by the OWNER or Others, it shall be the responsibility of the CONSTRUCTOR to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the CONSTRUCTOR shall be the responsibility of the CONSTRUCTOR and shall be deducted by the OWNER from any payments due or to become due the CONSTRUCTOR. If payments then or thereafter due to the CONSTRUCTOR are not sufficient, the OWNER shall charge the CONSTRUCTOR for the cost of the loss or damage and the CONSTRUCTOR shall promptly pay amounts due to the OWNER. Any defects discovered in such materials or equipment shall be reported at once to the OWNER. Following receipt of written notice from the CONSTRUCTOR of defects, the OWNER shall promptly inform the CONSTRUCTOR what action, if any, the CONSTRUCTOR shall take with regard to the defects.

### 3.7 TESTS AND INSPECTIONS

3.7.1 The CONSTRUCTOR shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The CONSTRUCTOR shall give proper notice to all required Parties of such tests, approvals and inspections. If feasible, the OWNER and Others may timely observe the tests at the normal place of testing. Except as provided in subsection 3.7.3, the OWNER shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents, which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the OWNER. Unless otherwise required by the Contract Documents, required documents and/or certificates of testing, approval or inspection shall be secured by the CONSTRUCTOR and immediately delivered to the OWNER. The Constructor's duty to provide the OWNER with required documents and/or certificates of testing, approval or inspection shall not be conditioned upon the payment of all or any portion of the Contract Price. Failure of the CONSTRUCTOR to provide any documents and/or certificates required under this subsection 3.7.1 shall be considered a material breach of this Agreement.

3.7.2 If the OWNER or appropriate authorities determine that tests, inspections or approvals in addition to those required by the Contract Documents will be necessary, the CONSTRUCTOR shall arrange for the procedures and give timely notice to the OWNER and Others who may observe the procedures. Costs of the additional tests, inspections or approvals are at the OWNER's expense except as provided in the subsection below.

3.7.3 If the procedures described in two subsections above indicate that portions of the Work fail to comply with the Contract Documents, the CONSTRUCTOR shall be responsible for costs of correction and retesting.

3.7.4 If the CONSTRUCTOR fails to schedule or conduct any test, approval, or inspection required under section 3.7, or fails to provide the OWNER with any document and/or certificate required under section 3.7, the OWNER may proceed to schedule any required test, approval, or inspection, and the CONSTRUCTOR shall be responsible for all costs associated with such test, approval, or inspection. The OWNER shall deduct these costs from payments then or thereafter due to the CONSTRUCTOR. If payments then or thereafter due to the CONSTRUCTOR are not sufficient, the OWNER shall charge the CONSTRUCTOR for these costs and the CONSTRUCTOR shall promptly pay amounts due to the OWNER.

### 3.8 WARRANTY

3.8.1 The CONSTRUCTOR warrants that all materials and equipment shall be new, unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the OWNER's request, the CONSTRUCTOR shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The CONSTRUCTOR further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The CONSTRUCTOR's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the OWNER or Others, or abuse. The CONSTRUCTOR's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.8.2 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the OWNER, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.

3.8.3 The CONSTRUCTOR shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents and deliver the same to OWNER. The CONSTRUCTOR's liability for such warranties shall be limited to the one-year correction period as provided in the section below unless otherwise stated in the Project Requirements. After that period, the CONSTRUCTOR shall provide reasonable assistance to the OWNER in enforcing the obligations of Subcontractors or Material Suppliers for such extended warranties.

3.8.4 Unless otherwise specifically stated in the Contract Documents, all required warranties shall be, at minimum, a no dollar limit warranty.

### 3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, the OWNER shall notify the CONSTRUCTOR in writing within a reasonable amount of time. Unless the OWNER provides written acceptance of the condition, the CONSTRUCTOR shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the OWNER discovers and does not notify the CONSTRUCTOR within a reasonable amount of time or give the CONSTRUCTOR an opportunity to test or correct Defective Work as reasonably requested by the CONSTRUCTOR, the OWNER waives the CONSTRUCTOR's obligation to correct that Defective Work as well as the OWNER's right to claim a breach of the warranty with respect to that Defective Work.



3.9.2 With respect to any portion of Work not accepted at Substantial Completion, the one-year correction period shall commence upon the date the Work is accepted by the OWNER. Correction periods shall not be extended by corrective work performed by the CONSTRUCTOR.

3.9.3 If the CONSTRUCTOR fails to correct Defective Work within a reasonable time after receipt of written notice from the OWNER prior to final payment, the OWNER may correct it in accordance with the OWNER's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due the CONSTRUCTOR. If payments then or thereafter due the CONSTRUCTOR are not sufficient to cover such amounts, the CONSTRUCTOR shall pay the difference to the OWNER promptly upon demand.

3.9.4 If after the one-year correction period, but before the applicable limitation period, the OWNER discovers any Defective Work, the OWNER shall, unless the Defective Work requires emergency correction, notify the CONSTRUCTOR within a reasonable period of time. If the CONSTRUCTOR elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the OWNER. The CONSTRUCTOR shall complete the correction of Work within a mutually agreed timeframe. If the CONSTRUCTOR does not elect to correct the Work, the OWNER may have the Work corrected by itself or Others and deduct the cost of correcting the Defective Work from payments then or thereafter due to the CONSTRUCTOR. If payments then or thereafter due to the CONSTRUCTOR are not sufficient, the OWNER shall charge the CONSTRUCTOR for the cost of the correction and the CONSTRUCTOR shall promptly pay amounts due to the OWNER. The OWNER shall provide the CONSTRUCTOR with an accounting of correction costs it incurs.

3.9.5 If the CONSTRUCTOR's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the CONSTRUCTOR shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the CONSTRUCTOR's other obligations under the Contract Documents, or any of the OWNER's legal rights, including, but not limited to, claims for breach of contract.

3.9.7 The OWNER's may, at its option, elect to accept Defective Work rather than require its removal and correction. If the OWNER's elects to accept Defective Work prior to final payment, the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work as determined by the OWNER, and any diminution in value shall be deducted from any payments then or thereafter due to the CONSTRUCTOR. If the OWNER's elect to accept Defective Work after final payment, or payments then or thereafter due to the CONSTRUCTOR are not sufficient to cover such amounts, the OWNER shall charge the CONSTRUCTOR for the amount of diminution in value and the CONSTRUCTOR shall promptly pay amounts due to the OWNER.

### 3.10 CORRECTION OF COVERED WORK

3.10.1 On request of the OWNER, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the OWNER's inspection. The OWNER shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the OWNER or Others. If the uncovered Work proves to be defective, the CONSTRUCTOR shall pay the costs of uncovering and replacement.

3.10.2 If, contrary to specific requirements in the Contract Documents or contrary to a specific request from the OWNER, a portion of the Work is covered, the OWNER, by written request, may require the CONSTRUCTOR to uncover the Work for the OWNER's observation. In this circumstance the costs of uncovering and replacement of the Work shall be at the CONSTRUCTOR's expense and with no adjustment to the Contract Time.

### 3.11 SAFETY OF PERSONS AND PROPERTY

3.11.1 SAFETY PRECAUTIONS AND PROGRAMS The CONSTRUCTOR shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work or for compliance with Laws.

3.11.2 The CONSTRUCTOR shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in the Work; and (c) property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Worksite.

3.11.3 The CONSTRUCTOR shall designate a responsible member of the CONSTRUCTOR's organization at the site as the CONSTRUCTOR's Safety Representative whose duty shall be the prevention of accidents. This person shall be the CONSTRUCTOR's superintendent unless otherwise designated by the CONSTRUCTOR in writing to the OWNER. The CONSTRUCTOR shall report promptly in writing to the OWNER all recordable accidents and injuries occurring at the Worksite. When the CONSTRUCTOR is required to file an accident report with a public authority, the CONSTRUCTOR shall promptly furnish a copy of the report to the OWNER.

3.11.4 The CONSTRUCTOR shall provide the OWNER with copies of all notices required of the CONSTRUCTOR by law or regulation. The CONSTRUCTOR's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.11.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by the acts or omissions of the CONSTRUCTOR, or anyone for whose acts the CONSTRUCTOR may be liable, shall be promptly remedied by the CONSTRUCTOR.

3.11.6 If the OWNER deems any part of the Work or Worksite unsafe, the OWNER, without assuming responsibility for the CONSTRUCTOR's safety program, may require the CONSTRUCTOR to stop performance of the Work or take corrective measures satisfactory to the OWNER, or both. If the CONSTRUCTOR does not adopt corrective measures, the OWNER may perform them and deduct their cost from the Contract Price. The CONSTRUCTOR agrees to make no claim for damages, for an increase in the Contract Price or for a change in the Contract Time based on the CONSTRUCTOR's compliance with the OWNER's reasonable request.

3.12 EMERGENCIES In an emergency affecting the safety of persons or property, the CONSTRUCTOR shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price or Contract Time resulting from the actions of the CONSTRUCTOR in an emergency situation shall be determined as provided for in ARTICLE 8.

### 3.13 HAZARDOUS MATERIALS

3.13.1 A Hazardous Material is any substance or material identified as hazardous under Laws, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup, except that in the category of Asbestos Containing Materials, materials containing less than once percent (< 1%) asbestos and Asbestos Containing Materials that are encapsulated shall not be considered Hazardous

Materials subject to the requirements of Section 3.13. The CONSTRUCTOR shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by the OWNER.

3.13.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, the CONSTRUCTOR shall be entitled to immediately stop Work in the affected area. The CONSTRUCTOR shall promptly report the condition to the OWNER, the DESIGN PROFESSIONAL, and, if required, the governmental agency with jurisdiction.

3.13.3 The CONSTRUCTOR shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement of the OWNER and the CONSTRUCTOR.

3.13.4 The OWNER shall be responsible for determining the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the OWNER, and shall be performed in a manner minimizing any adverse effect upon the Work. The CONSTRUCTOR shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.13.5 If the CONSTRUCTOR incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the CONSTRUCTOR shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

3.13.6 Subsections 3.13.1 through 3.13.5 shall not apply to any Hazardous Material that is included in the scope of Work to be performed by the CONSTRUCTOR.

#### 3.13.7 MATERIALS BROUGHT TO THE WORKSITE

3.13.7.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the CONSTRUCTOR, Subcontractors, the OWNER or Others, shall be maintained at the Worksite by the CONSTRUCTOR and made available to the OWNER, Subcontractors and Others.

3.13.7.2 The CONSTRUCTOR shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the CONSTRUCTOR in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.13.7.3 The CONSTRUCTOR shall indemnify and hold harmless the OWNER, its agents, officers, directors and employees, from and against any and all claims, damages, losses, costs and expenses, including attorney fees, incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the CONSTRUCTOR in accordance with the Contract Documents.

3.13.8 Section 3.13 shall survive the completion of the Work or any termination of this Agreement.

#### 3.14 SUBMITTALS

3.14.1 The CONSTRUCTOR shall submit to the OWNER and the DESIGN PROFESSIONAL all shop drawings, samples, product data and similar submittals required by the Contract Documents for

review. Submittals shall be submitted in electronic form if required in accordance with subsection 4.4.1. The CONSTRUCTOR shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, the CONSTRUCTOR shall prepare and deliver its submittals in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of the OWNER and Others. CONSTRUCTOR submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review of any CONSTRUCTOR submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the OWNER specifically authorizing such deviation, substitution or change. To the extent a change, deviation or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Neither the DESIGN PROFESSIONAL nor OWNER shall make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the CONSTRUCTOR. If the Contract Documents do not contain submittal requirements pertaining to the Work, the CONSTRUCTOR agrees upon request to submit in a timely fashion to the DESIGN PROFESSIONAL and the OWNER for review any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the OWNER.

3.14.1.1 The CONSTRUCTOR shall provide the DESIGN PROFESSIONAL with a submittal schedule within the first thirty (30) days of the Work and shall accept reasonable modifications to the schedule made by the OWNER and DESIGN PROFESSIONAL. The CONSTRUCTOR shall not be entitled to an increase in Contract Time or Contract Price resulting from delays in review of submittals that are not submitted in a timely manner and in accordance with the submittal schedule.

3.14.2 The OWNER or designee shall be responsible for review of submittals with reasonable promptness to avoid causing delay. Any time required to prepare, submit and review a previously rejected submittal will not justify an increase to the Contract Price and/or the Contract Time. The OWNER may require the CONSTRUCTOR to reimburse the OWNER for all costs incurred by the OWNER that were made necessary by excessive re-review of previously submitted submittals as determined by the OWNER. The OWNER shall deduct these cost from payments then or thereafter due to the Constructor. If payments then or thereafter due to the CONSTRUCTOR are not sufficient, the OWNER shall charge the CONSTRUCTOR for these costs and the CONSTRUCTOR shall promptly pay amounts due to the OWNER.

3.14.3 The CONSTRUCTOR shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 8 are followed. Approval does not relieve the CONSTRUCTOR from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings. Any work performed prior to approval of the relevant submittal shall be at the CONSTRUCTORS risk.

~~3.14.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the OWNER upon request: — DRAWINGS, SPECIFICATIONS, addenda, Change Order and other modifications, and required submittals including product data, samples and shop drawings. Upon the OWNER's request, the CONSTRUCTOR shall provide the OWNER with access to any electronic systems or databases in which the items specified in this subsection 3.14.4 may be stored.~~

3.14.4 The CONSTRUCTOR shall maintain at the Worksite As-Built Documents, recording and incorporating field changes and selections made during construction of the following: DRAWINGS, SPECIFICATIONS, addenda, Change Order and other modifications, and required submittals including product data, samples and shop drawings. Upon the OWNER's request, the CONSTRUCTOR shall provide the OWNER with access to the As-Built Documents and any electronic systems or databases in which the items specified in this subsection 3.14.4 may be stored.

3.14.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the CONSTRUCTOR obtains approvals required under the Contract Documents for substitutions. All such substitutions shall be promptly memorialized in a Change Order following approval by the OWNER and DESIGN PROFESSIONAL and, if applicable, provide for an adjustment in the Contract Price or Contract Time.

3.14.6 Prior to issuance of final payment, the CONSTRUCTOR shall prepare and submit to the OWNER final marked-up ~~record drawings~~ As-Built Documents, which have been reviewed and approved by the DESIGN PROFESSIONAL or Others at the OWNER'S discretion, documenting how the various elements of the Work were actually constructed or installed by the CONSTRUCTOR.

3.15 DESIGN DELEGATION If the Contract Documents specifically require the CONSTRUCTOR to procure design services, the OWNER shall specify all required performance and design criteria. The CONSTRUCTOR shall not be responsible for the adequacy of such performance and design criteria. As permitted by the laws, rules, and regulations in the jurisdiction where the Project is located, the CONSTRUCTOR shall procure such services and any certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of the CONSTRUCTOR's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by CONSTRUCTOR's design professional.

### 3.16 WORKSITE CONDITIONS

3.16.1 WORKSITE VISIT The CONSTRUCTOR acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.16.2 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the CONSTRUCTOR shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the OWNER and the DESIGN PROFESSIONAL. CONSTRUCTOR shall not disturb the condition. The OWNER shall promptly investigate and determine whether or not the condition encountered is concealed or unknown and promptly inform the CONSTRUCTOR of its decision in writing. The CONSTRUCTOR shall not be required to proceed with the portion of the Work affected by the unknown or concealed condition until instructed to do so by the OWNER. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in ARTICLE 8.

### 3.17 PERMITS AND TAXES

3.17.1 CONSTRUCTOR shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of the OWNER, shall obtain and pay for all necessary permits,

licenses, and renewals pertaining to the Work. The CONSTRUCTOR shall promptly provide to the OWNER copies of all notices, permits, licenses, and renewals required under this Agreement.

3.17.2 The CONSTRUCTOR shall pay all applicable taxes enacted when bids are received or negotiations concluded for the Work provided by the CONSTRUCTOR.

3.17.2.1 Iowa Construction Sales Tax Exemption Certificates and authorization letters will be provided by the OWNER to the CONSTRUCTOR and Subcontractors for use on this project in accordance with the regulations of the Iowa Department of Revenue and Finance. This exemption certificate will authorize suppliers to sell construction materials that will be incorporated into and made part of the Work exempt from Iowa sales tax and any applicable local option sales tax and school infrastructure local option sales tax. Complete information on qualifying materials can be found on the Iowa Department of Revenue and Finance web site at [www.state.ia.us/tax](http://www.state.ia.us/tax). It is the responsibility of the CONSTRUCTOR and Subcontractors to maintain records identifying the materials purchased and verifying they were used on this project. Any materials purchased tax-free and not used on the project are subject to sales and local option taxes and these taxes must be paid directly to the Iowa Department of Revenue and Finance.

3.17.2.2 If Iowa sales and/or use taxes, including local option sales taxes where applicable, are paid by the CONSTRUCTOR and all Subcontractors for supplies, materials or equipment incorporated into and made part of the Work, upon completion of this Contract, but before final payment, the CONSTRUCTOR shall furnish the OWNER, a CONSTRUCTOR's Statement properly executed and sworn to, listing all Iowa sales and/or use taxes, and local option sales taxes where applicable, paid by the CONSTRUCTOR and all Subcontractors on all supplies and materials and on all equipment incorporated into and made part of the Work. The CONSTRUCTOR's Statement form is available on the Iowa Department of Revenue web site at <http://www.iowa.gov/tax/forms/35002.pdf>.

### 3.18 CUTTING, FITTING AND PATCHING

3.18.1 The CONSTRUCTOR shall perform cutting, fitting and patching necessary to complete the various parts of the Work and to prepare its Work for the work of the OWNER or Others.

3.18.2 Cutting, patching or altering the work of the OWNER or Others shall be done with the prior written approval of the OWNER. Such approval shall not be unreasonably withheld.

### 3.19 CLEANING UP

3.19.1 The CONSTRUCTOR shall regularly remove debris and waste materials at the Worksite and adjacent premises resulting from the Work. Prior to discontinuing Work in an area, the CONSTRUCTOR shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The CONSTRUCTOR shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the CONSTRUCTOR shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.19.2 If the CONSTRUCTOR fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the OWNER of non-compliance, the OWNER may

implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any payments then or thereafter due the CONSTRUCTOR. If payments then or thereafter due to the CONSTRUCTOR are not sufficient, the OWNER shall charge the CONSTRUCTOR for these costs and the CONSTRUCTOR shall promptly pay amounts due to the OWNER.

3.20 ACCESS TO WORK The CONSTRUCTOR shall facilitate the access of the OWNER, DESIGN PROFESSIONAL and Others to Work in progress. The CONSTRUCTOR shall furnish the OWNER and DESIGN PROFESSIONAL all necessary assistance to facilitate inspections throughout the process of manufacture or construction, or for the examination of any materials entering into the Work or for any other purpose required in the discharge of the OWNER's duties.

3.21 COMPLIANCE WITH LAWS The CONSTRUCTOR shall comply with all Laws at its own costs. The CONSTRUCTOR shall be liable to the OWNER for all loss, cost, or expense attributable to any acts or omissions by the CONSTRUCTOR, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if advance written notice to the OWNER was given, and advance written approval by appropriate authorities, including the OWNER, is received.

3.21.1 The Contract Price or Contract Time shall be equitably adjusted by Change Order for additional costs resulting from any changes in Laws, which were not reasonably anticipated and then enacted after the date of this Agreement.

3.22 CONFIDENTIALITY Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the CONSTRUCTOR shall treat as confidential and not disclose to third-persons, except Subcontractors, Subsubcontractors, and Material Suppliers as is necessary for the performance of the Work any of the OWNER's confidential information, knowhow, discoveries, production methods, and the like that may be disclosed to the CONSTRUCTOR or which the CONSTRUCTOR may acquire in connection with the Work. The OWNER shall specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, the CONSTRUCTOR shall promptly notify the OWNER to permit the OWNER's legal objection, if necessary. For the purposes of this section 3.22, the DRAWINGS, shop drawings, SPECIFICATIONS, record documents, As-Built Documents, pay requests, and product data are designated Confidential by the OWNER. Additional information may be separately designated as confidential by the OWNER at any time.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES OWNER's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

4.2 WORKSITE INFORMATION To the extent the OWNER has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the OWNER shall provide at the OWNER's expense and with reasonable promptness:

4.2.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private



information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the CONSTRUCTOR in laying out the Work;

4.2.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law; and

4.2.3 any other information or services requested in writing by the CONSTRUCTOR which are required for the CONSTRUCTOR's performance of the Work and under the OWNER's control.

4.3 **BUILDING PERMIT, FEES, AND APPROVALS** Except for those permits and fees related to the Work which are the responsibility of the CONSTRUCTOR, the OWNER shall secure and pay for all other permits, approvals, easements, assessments and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.4 **CONTRACT DOCUMENTS** Unless otherwise specified, the OWNER shall provide hard copies of the Contract Documents as are reasonably necessary for execution of the Work to the CONSTRUCTOR without cost.

4.4.1 **DOCUMENTS IN ELECTRONIC FORM** If the OWNER requires that the OWNER, DESIGN PROFESSIONAL and CONSTRUCTOR exchange documents and data in electronic or digital form, prior to any such exchange, the OWNER, DESIGN PROFESSIONAL and CONSTRUCTOR shall agree on a written protocol governing all exchanges which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and services; (d) acceptable formats, transmission methods and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.5 **OWNER'S REPRESENTATIVE** The OWNER's Representative is identified in Section 00 73 13 Institution Requirements. The OWNER's Representative shall be fully acquainted with the Project and is authorized to act on behalf of the OWNER. The OWNER's Representative will provide general administration of the contract and shall fulfill the duties, rights and obligations of the OWNER under the Contract Documents. If the OWNER changes its representative or its Representative's authority, the OWNER shall immediately notify the CONSTRUCTOR in writing.

4.6 **OWNER'S CUTTING AND PATCHING** Cutting, patching or altering the Work by the OWNER or Others shall be done with the prior written approval of the CONSTRUCTOR, which approval shall not be unreasonably withheld.

4.7 **OWNER'S RIGHT TO CLEAN UP** In case of a dispute between the CONSTRUCTOR and Others with regard to respective responsibilities for cleaning up at the Worksite, the OWNER may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period. The OWNER shall deduct the portion of these costs allocated to the CONSTRUCTOR from payments then or thereafter due to the Constructor. If payments then or thereafter due to the CONSTRUCTOR are not sufficient, the OWNER shall charge the CONSTRUCTOR for its portion of these costs and the CONSTRUCTOR shall promptly pay amounts due to the OWNER.



4.8 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of the OWNER or Others and not to the CONSTRUCTOR, the OWNER may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the CONSTRUCTOR incurs additional costs or is delayed due to such loss or damage, the CONSTRUCTOR shall be entitled to an equitable adjustment in the Contract Price or Contract Time.

## ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS The Work not performed by the CONSTRUCTOR with its own forces shall be performed by Subcontractors.

### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 The CONSTRUCTOR shall provide the OWNER and, if directed, the DESIGN PROFESSIONAL with a written list of the proposed Subcontractors and significant Material Suppliers two business days after receipt of the Notice of Award. The CONSTRUCTOR shall provide an Iowa CONSTRUCTORS registration number for all Subcontractors. If the OWNER has an objection to any proposed Subcontractor or Material Supplier, the OWNER shall notify the CONSTRUCTOR in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If the OWNER has promptly objected, the CONSTRUCTOR shall not contract with the proposed Subcontractor or Material supplier, and the CONSTRUCTOR shall propose another acceptable Subcontractor or Material supplier to the OWNER. An appropriate Change Order shall reflect any increase or decrease in the Contract Price or Contract Time because of the substitution. The CONSTRUCTOR shall not change a Subcontractor, previously selected, if the OWNER objects to such change.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The CONSTRUCTOR agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of the Agreement and the Contract Documents as they apply to the Subcontractor's or Material Supplier's portions of the Work. In accordance with Chapter 573 of the Code of Iowa, CONSTRUCTOR shall make prompt payments to Subcontractors for satisfactory performance of the Work. The OWNER shall have no obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If the Agreement is terminated, each subcontract and supply agreement shall be assigned by the CONSTRUCTOR to the OWNER, subject to the prior rights of any surety, provided that: (a) the Agreement is terminated by the OWNER pursuant to sections 11.3 or 11.4; and (b) the OWNER accepts such assignment after termination by notifying the Subcontractor and CONSTRUCTOR in writing, and assumes all rights and obligations of the CONSTRUCTOR pursuant to each subcontract agreement. The OWNER does not assume responsibility for any of CONTRACTOR's obligations existing prior to the date of assumption unless expressly agreed to in writing.

5.4.2 If the OWNER accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

## ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement of the Work is the date established by the Notice of Award unless otherwise set forth in Section 00 74 13 Project Requirements

6.1.1 SUBSTANTIAL/FINAL COMPLETION Substantial Completion of the Work shall be achieved in accordance with the milestone schedule stated in Section 00 74 13 Project Requirements. Unless otherwise specified in the Certificate of Substantial Completion, the CONSTRUCTOR shall achieve Final Completion in accordance with Section 00 74 13 Project Requirements. The deadlines for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence for the Agreement and the Contract Documents.

6.1.3 Unless instructed by the OWNER in writing, the CONSTRUCTOR shall not knowingly commence the Work before the effective date of insurance to be provided by the CONSTRUCTOR or the OWNER as required by the Contract Documents.

## 6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting the first application for payment, the CONSTRUCTOR shall submit to the OWNER, and if directed, to the DESIGN PROFESSIONAL, a Schedule of the Work showing the dates on which the CONSTRUCTOR plans to commence and complete various parts of the Work, including dates on which information, approvals, self-performed work, selection of allowance items, and other known OWNER services, tasks and work are required. The CONSTRUCTOR shall comply with the approved Schedule of the Work unless directed by the OWNER to do otherwise or the CONSTRUCTOR is otherwise entitled to an adjustment in the Contract Time. The CONSTRUCTOR shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

6.2.2 The OWNER may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The OWNER may require the CONSTRUCTOR to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the OWNER or Others. To the extent such changes increase the CONSTRUCTOR's costs or time, the Contract Price and Contract Time shall be equitably adjusted.

## 6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If the CONSTRUCTOR is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the CONSTRUCTOR, the CONSTRUCTOR shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of the CONSTRUCTOR include, but are not limited to, the following: (a) acts or omissions of the OWNER, the DESIGN PROFESSIONAL or Others; (b) changes in the Work or the sequencing of the Work ordered by the OWNER, or arising from decisions of the OWNER that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the OWNER pending dispute resolution or suspension by the OWNER under section 11.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the CONSTRUCTOR; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The CONSTRUCTOR shall submit any requests for equitable extensions of Contract Time in accordance with ARTICLE 8.

6.3.2 In addition, if the CONSTRUCTOR incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, the CONSTRUCTOR may be entitled to an equitable adjustment in the Contract Price.

6.3.3 CONSTRUCTOR NOTICE OF DELAYS If delays to the Work are encountered for any reason, the CONSTRUCTOR shall provide prompt written notice to the OWNER of the cause of such delays after the CONSTRUCTOR first recognizes the delay. The OWNER and the CONSTRUCTOR agree to take reasonable steps to mitigate the effect of such delays.

6.3.4 OWNER NOTICE OF DELAYS The Owner may direct a delay in the Work for any reason by providing prompt written notice to the CONSTRUCTOR of the cause of such delays after the OWNER first recognizes the need for the delay. The OWNER and the CONSTRUCTOR agree to take reasonable steps to mitigate the effect of such delays. If the CONSTRUCTOR incurs additional costs as a result of a delay that is caused by items (a) through (d) in 6.3.1, the CONSTRUCTOR may be entitled to an equitable adjustment in the Contract Price. For the avoidance of doubt, the CONSTRUCTOR shall not be entitled to an adjustment in the Contract Price as a result of a delay that is caused by items (e) through (m) in 6.3.1.

6.4 NOTICE OF DELAY CLAIMS If the CONSTRUCTOR requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in the section above, the CONSTRUCTOR shall give the OWNER written notice of the claim in accordance with section 8.4. If the CONSTRUCTOR causes delay in the completion of the Work, the OWNER shall be entitled to recover its additional costs. The OWNER shall process any such claim against the CONSTRUCTOR in accordance with ARTICLE 8.

6.5 LIQUIDATED DAMAGES See Section 00 74 13 Project Requirements.

## ARTICLE 7 PRICE

7.1 LUMP SUM As full compensation for performance by the CONSTRUCTOR of the Work in conformance with the Contract Documents, the OWNER shall pay the CONSTRUCTOR the lump sum indicated in the Agreement. The lump sum price is hereinafter referred to as the Contract Price, which shall be subject to increase or decrease as provided in ARTICLE 8.

### 7.2 ALLOWANCES

7.2.1 All allowances stated in the Contract Documents shall be included in the Contract Price. While the OWNER may direct the amounts of, and particular material suppliers or subcontractors for, specific allowance items, if the CONSTRUCTOR reasonably objects to a material supplier or subcontractor, it shall not be required to contract with them. The OWNER shall select allowance items in a timely manner so as not to delay the Work.

7.2.2 Allowances shall include the costs of materials, supplies and equipment delivered to the Worksite, less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The CONSTRUCTOR's Overhead and profit for the allowances shall be included in the Contract Price, but not in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

## ARTICLE 8 CHANGES

Changes in the Work that are within the general scope of the Agreement shall be accomplished, without invalidating this Agreement, by Change Order, and Interim Directed Change.

## 8.1 CHANGE ORDER

- 8.1.1 The CONSTRUCTOR may request or the OWNER may order changes in the Work or the timing or sequencing of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order and processed in accordance with this article.
- 8.1.2 For changes in the Work, the OWNER and the CONSTRUCTOR shall negotiate an appropriate adjustment to the Contract Price or the Contract Time in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld. Any request for an adjustment in Contract Time as a result of changes in the Work must be justified and presented in adequate detail showing that the proposed change will delay the final Contract substantial completion date
- 8.1.3 NO OBLIGATION TO PERFORM The CONSTRUCTOR shall not be obligated to perform changes in the Work that impact Contract Price or Contract Time until a Change Order has been executed or a written Interim Directed Change has been issued.

## 8.2 INTERIM DIRECTED CHANGE

- 8.2.1 The OWNER may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the CONSTRUCTOR on the adjustment, if any, in the Contract Price or the Contract Time.
- 8.2.2 The OWNER and the CONSTRUCTOR shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directed Change. As the changed Work is performed, the CONSTRUCTOR shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the OWNER, the OWNER shall pay the CONSTRUCTOR amounts not in dispute. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 12.
- 8.2.3 When the OWNER and the CONSTRUCTOR agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order. The Change Order shall include all outstanding Interim Directed Changes on which the OWNER and CONSTRUCTOR have reached agreement on Contract Price or Contract Time issued since the last Change Order.

## 8.3 DETERMINATION OF COST

- 8.3.1 An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:
- 8.3.1.1 unit prices set forth in the Agreement or as subsequently agreed; or
- 8.3.1.2 a mutually accepted, itemized lump sum with the increase or decrease in the COST OF THE WORK as defined in subsection 8.3.1.3 properly itemized and supported by sufficient substantiating data to permit evaluation.
- 8.3.1.3 COST OF THE WORK Cost of the Work as defined by this subsection. COST OF THE WORK shall include the following costs reasonably incurred to perform a change in the

Work: The OWNER may require that a COST OF THE WORK form be filled out for each day's work and signed by an authorized representative of the CONSTRUCTOR and approved by the OWNER's Representative. The OWNER may also require that the CONSTRUCTOR provide sufficient documentation of actual expenses claimed under any of the following subsections:

- 8.3.1.3.1 wages paid for labor in the direct employ of the CONSTRUCTOR in the performance of the Work; Labor costs shall be itemized to indicate trade, hourly rate, man hours, and total cost;
- 8.3.1.3.2 salaries of the CONSTRUCTOR's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office performing functions directly attributable to the change. The OWNER may require that the CONSTRUCTOR provide sufficient documentation of actual expenses claimed under this subsection 8.3.1.3.2;
- 8.3.1.3.3 cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the CONTRACTOR's standard personnel policy, insofar as such costs are paid to employees of the CONSTRUCTOR who are included in the Cost of the Work in subsections .1 and .2 immediately above;
- 8.3.1.3.4 reasonable transportation, travel, and hotel expenses of the CONSTRUCTOR's personnel incurred in connection with the Work;
- 8.3.1.3.5 cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by the OWNER, transportation, storage, and handling. Material costs shall be itemized to include unit cost, quantity, and total cost for each item;
- 8.3.1.3.6 payments made by the CONSTRUCTOR to Subcontractors for Work performed under this Agreement. The direct expenses and overhead and profit percentages for work performed by Subcontractors is subject to the same limitations and requirements specified herein for the CONSTRUCTOR. Subcontractor costs shall be appropriately itemized and the CONSTRUCTOR shall furnish Subcontractor quotations or itemization for all costs included;
- 8.3.1.3.7 cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of the CONSTRUCTOR;
- 8.3.1.3.8 rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the CONSTRUCTOR or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the CONSTRUCTOR or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eightyfive percent (85%) of the value of the piece of equipment. Equipment costs shall be

itemized to include equipment type, number of each, equipment charge out rate, and total cost for each item;

8.3.1.3.9 cost of the premiums for all insurance and surety bonds which the CONSTRUCTOR is required to procure or deems necessary, and approved by the OWNER including any additional premium incurred as a result of any increase in the cost of the Work;

8.3.1.3.10 sales, use, gross receipts or other taxes, tariffs, or duties related to the Work for which the CONSTRUCTOR is liable; except when a sales tax exemption certificate has been provided as indicated in subsection 3.17.2.1, related to the Change Order Work;

8.3.1.3.11 permits, fees, licenses, tests, and royalties;

8.3.1.3.12 all water, power, and fuel costs paid by the CONSTRUCTOR that are directly incurred to perform a change in the Work;

8.3.1.3.13 cost of removal of all nonhazardous substances, debris, and waste materials;

8.3.1.3.14 The percentage mark-up for overhead and profit is subject to the following limits: (a) fifteen percent (15%) maximum for Work directly performed by employees of the CONSTRUCTOR, Subcontractor, or Sub-Subcontractor; (b) five percent (5%) maximum for Work performed or passed through by a Subcontractor and passed through to the OWNER by the CONSTRUCTOR; (c) five percent (5%) maximum Subcontractor's mark-up for Work performed by a Sub-Subcontractor and passed through to the OWNER by the Subcontractor and CONSTRUCTOR; and (d) the maximum allowable mark-up shall be twenty-five percent (25%) passed through to the OWNER by the CONSTRUCTOR under any circumstances. Overhead and profit shall be shown separately for the CONSTRUCTOR and each Subcontractor of any tier performing the Change Order Work;

8.3.1.3.15 DISCOUNTS All discounts for prompt payment shall accrue to the OWNER to the extent such payments are made directly by the OWNER. To the extent payments are made with funds of the CONSTRUCTOR, all cash discounts shall accrue to the CONSTRUCTOR. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work;

8.3.1.3.16 COST REPORTING The CONSTRUCTOR shall maintain in conformance with generally accepted accounting principles a complete and current set of records that are prepared or used by the CONSTRUCTOR to calculate the Cost of Work. The OWNER shall be afforded access to the CONSTRUCTOR's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to requested payment for Cost of the Work. The CONSTRUCTOR shall preserve all such records for a period of three years after the final payment or longer where required by law; and

8.3.1.3.17 COST AND SCHEDULE ESTIMATES The CONTRACTOR shall use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work, but does not warrant or guarantee the accuracy of amounts not included in a written change order signed by both Parties.

8.3.2 If an increase or decrease in the Contract Price or Contract Time cannot be agreed to as set forth in subsection 8.3.1, and the OWNER issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, the CONSTRUCTOR's Overhead and Profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, the CONSTRUCTOR's Overhead and Profit shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The CONSTRUCTOR shall maintain a documented, itemized accounting evidencing the expenses and savings.

8.3.3 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the OWNER or the CONSTRUCTOR, such unit prices shall be equitably adjusted.

8.3.4 If the OWNER and the CONSTRUCTOR disagree as to whether work required by the OWNER is within the scope of the Work, the CONSTRUCTOR shall furnish the OWNER with an estimate of the costs to perform the disputed work in accordance with the OWNER's interpretations. If the OWNER issues a written order for the CONSTRUCTOR to proceed, the CONSTRUCTOR shall perform the disputed work and the OWNER shall pay the CONSTRUCTOR amounts not in dispute. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work, subject to the requirements of ARTICLE 12. The OWNER's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. The CONSTRUCTOR's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in subsection 6.3.2 and section 6.4 for any claim for an increase in the Contract Price or the Contract Time, the CONSTRUCTOR shall give the OWNER written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the CONSTRUCTOR knows, or should have known with the exercise of reasonable diligence, of the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, the CONSTRUCTOR shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. Prior to submitting any claim by a Subcontractor for additional compensation, the CONSTRUCTOR shall have examined any such claim and verified its accuracy and completeness, and the CONSTRUCTOR shall have identified any Claim or portion of the Claim that is not the responsibility of the OWNER. The OWNER shall respond in writing denying or approving the CONSTRUCTOR's claim no later than fourteen (14) Days after receipt of the CONSTRUCTOR's claim. OWNER's failure to so respond shall be deemed a denial of the claim. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order. **IMPORTANT NOTICE REGARDING CLAIM PROCEDURES:** The CONSTRUCTOR's obligation to strictly follow the notice requirements of ARTICLE 8 in its entirety including the giving of timely and complete notice of a claim is a condition precedent to recovering under any claim. Failure of the CONSTRUCTOR to strictly follow these requirements shall constitute waiver of the claim. An additional Claim made after the initial Claim has been made shall not be considered unless also submitted in accordance with ARTICLE 8 and in a timely manner.

8.5 INCIDENTAL CHANGES The OWNER may direct the CONSTRUCTOR to perform incidental changes in the Work, upon concurrence with the CONSTRUCTOR that such changes do not involve adjustments in the Contract Price or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The OWNER shall initiate an incidental change in the Work by issuing a



written order to the CONSTRUCTOR. Such written notice shall be carried out promptly and is binding on the Parties.

## ARTICLE 9 PAYMENT

**9.1 SCHEDULE OF VALUES** Within twenty-one (21) Days from the date of Notice of Award, the CONSTRUCTOR shall prepare and submit to the OWNER and, if directed, the DESIGN PROFESSIONAL, a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the Contract Price.

### 9.2 PROGRESS PAYMENTS

**9.2.1 APPLICATIONS** The CONSTRUCTOR shall submit to the OWNER and the DESIGN PROFESSIONAL a monthly application for payment for the preceding monthly pay period on a form furnished by the OWNER. CONSTRUCTOR's applications for payment shall be itemized and supported by the CONSTRUCTOR's schedule of values and any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The OWNER shall pay the amount otherwise due on any payment application in the manner and within the time provided in the Contract Documents. The OWNER shall first deduct from any progress payment any amounts due to the OWNER under the terms of this Agreement, including, but not limited to, items listed in section 9.3. The OWNER shall then deduct from the adjusted progress payment amounts to be retained pursuant to subsection 9.2.4.

**9.2.2 STORED MATERIALS AND EQUIPMENT** Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by the CONSTRUCTOR of bills of sale and proof of required insurance, or such other documentation satisfactory to the OWNER to establish the proper valuation of the stored materials and equipment, the OWNER's title to such materials and equipment, and to otherwise protect the OWNER's interests therein, including transportation to the Worksite.

**9.2.3 LIEN WAIVERS AND LIENS** The CONSTRUCTOR represents and 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 CONSTRUCTOR 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 CONSTRUCTOR's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the CONSTRUCTOR, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**9.2.3.1** The OWNER reserves the right to request monthly lien waivers and/or subcontractor claim releases as a condition of payment of any progress payment. Subcontractor claim releases shall be submitted on the OWNER's standard form.

**9.2.4 RETAINAGE** The OWNER will withhold five percent (5%) from each progress payment, after any applicable adjustment in accordance with this Agreement, until final payment, consistent with the provisions of Chapters 262 and 573 of the Code of Iowa.



9.3 ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION The OWNER may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to (a) protect the OWNER from loss or damage or (b) pay or reimburse the OWNER for any amounts due to the OWNER under the terms of this Agreement, including, but not limited to, the following:

- 9.3.1 the CONSTRUCTOR's repeated failure to perform the Work as required by the Contract Documents;
- 9.3.2 except as accepted by the insurer providing builders risk or other property insurance covering the Project, loss or damage arising out of or relating to the Agreement and caused by the CONSTRUCTOR to the OWNER or to Others to whom the OWNER may be liable;
- 9.3.3 the CONSTRUCTOR's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the OWNER;
- 9.3.4 rejected, nonconforming or Defective Work not corrected in a timely fashion;
- 9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;
- 9.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and
- 9.3.7 uninsured third-party claims involving the CONSTRUCTOR, or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the CONSTRUCTOR furnishes the OWNER with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.
- 9.3.8 any other deduction that represents a payment due to the OWNER from the CONSTRUCTOR in accordance with the terms of this Agreement.
- 9.3.9 additional costs incurred by the OWNER, including but not limited to Design Professional and Consultant fees, as a result of schedule delays caused by CONSTRUCTOR.

Within fourteen (14) Days after receipt of an application for payment, the OWNER shall give written notice to the CONSTRUCTOR stating its specific reasons for any adjustment, rejection, or nullification of an application for payment, and the remedial actions to be taken by the CONSTRUCTOR in order to receive payment, if any.

9.4 ACCEPTANCE OF WORK Neither the OWNER's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work that is defective or does not comply with the Contract Documents.

#### 9.6 SUBSTANTIAL COMPLETION

- 9.6.1 The CONSTRUCTOR shall notify the OWNER and, if directed, the DESIGN PROFESSIONAL, when it considers Substantial Completion of the Work or a designated portion to have been achieved. The OWNER, with the assistance of its DESIGN PROFESSIONAL, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by the OWNER without excessive interference in completing any remaining unfinished Work. If the OWNER determines that the Work or designated portion has not reached Substantial Completion, the OWNER shall promptly compile a list of items to be

completed or corrected so the OWNER may occupy or use the Work or designated portion for its intended use. The CONSTRUCTOR shall promptly complete all items on the list.

9.6.2 When Substantial Completion of the Work or a designated portion is achieved, the OWNER shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of the OWNER and CONSTRUCTOR for interim items such as security, maintenance, utilities, insurance, and damage to the Work. In the absence of a clear delineation of responsibilities, the OWNER shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. The Certificate of Substantial Completion shall also list any items to be completed or corrected, and establish the time for their completion or correction. The Certificate of Substantial Completion shall be issued by the OWNER to the CONSTRUCTOR and, to the DESIGN PROFESSIONAL for notice of responsibilities assigned in the Certificate of Substantial Completion.

9.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

9.6.4 At any time after all or any part of the Work is substantially completed in accordance with subsection 9.6.1 above, the CONSTRUCTOR may request the release of all or part of the retainage owed under the provisions of sections 262.34, Code of Iowa. Any request for release of retainage under this section 9.6.4 must be submitted on the form supplied by the OWNER. In addition to any requirements under Iowa Code section 262.34 or other applicable law, such request shall be accompanied by (a) subcontractor claim releases and/or waiver of claim rights for all portions of the Work for which release of retainage is requested on the OWNER's form, and (b) the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Any request for release of retainage must be submitted to the individual designated by the OWNER as its representative. Any request for release of retainage that does not conform with the requirements of this subsection 9.6.4 is deemed denied for failure to comply with the requirements of this Agreement.

9.7 PARTIAL OCCUPANCY OR USE The OWNER may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the OWNER and CONSTRUCTOR have accepted in writing the responsibilities assigned to each of them

#### 9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon notification from the CONSTRUCTOR that the Work is complete and ready for final inspection and acceptance, the OWNER with the assistance of its DESIGN PROFESSIONAL shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.8.2 When Final Completion has been achieved, the CONSTRUCTOR shall prepare for the OWNER's written acceptance a final application for payment stating that to the best of the CONSTRUCTOR's knowledge, and based on the OWNER's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

9.8.3 When the Work is found acceptable under the Contract Documents, the OWNER will promptly issue a Certificate of Final Completion. Such notice will establish the date of Final Completion upon which the Contract is accepted as complete and upon which all remaining guarantees and warranties under the Contract shall commence.

9.8.4 The date of Final Completion shall also establish the commencement of the thirty-day period during which final payment of the balance due under the Contract must be retained by the OWNER under the provisions of Chapter 573, Code of Iowa and per provisions of this Agreement. The OWNER shall release retained funds in accordance with the provisions of Iowa Code Chapters 262 and 573 and per provisions of this Agreement. Final Completion is contingent on submission of the following to the OWNER: (a) ~~record drawings~~ **As-Built Documents** which have been reviewed and approved by the Design Professional or Others as directed by the OWNER, manuals, warranties and all other close-out documents required by the Contract Documents; (b) consent of any surety; (c) any outstanding known and unreported accidents or injuries experienced by the CONSTRUCTOR or its Subcontractors at the Worksite; and (d) Targeted Small Business Final Payment Reporting Form(s).

9.8.5 The Final Payment due to the CONSTRUCTOR, if any, shall be determined by the OWNER after making necessary adjustments for any deduction that represents a payment due to the OWNER from the CONSTRUCTOR in accordance with the terms of this Agreement, which deductions or adjustments shall become the property of the OWNER. The OWNER reserves the right to issue Final Payment to the CONSTRUCTOR as determined by the OWNER and in accordance with applicable law, regardless of whether CONSTRUCTOR has submitted an application for Final Payment.

9.8.6 OWNER RESERVATION OF CLAIMS By issuing final payment to the CONSTRUCTOR, the OWNER does not waive, and hereby reserves, any and all claims it may have against the CONSTRUCTOR, including, but not limited to, claims relating to liens or similar encumbrances, warranties, Defective Work, latent defects, breach of contract, and any other claim at law or in equity.

9.8.7 CONSTRUCTOR ACCEPTANCE OF FINAL PAYMENT Unless the CONSTRUCTOR provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

9.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due in accordance with provisions of Chapter 573 of the Code of Iowa.

## ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

### 10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, the CONSTRUCTOR shall indemnify and hold harmless the OWNER, the OWNER's officers, directors, members, consultants, agents, employees, successors and assigns (the Indemnitees) from and against all claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees, arising out of a claim for bodily injury and/or property damage, other than to the Work itself and other property insured, but only to the extent caused by the negligent or wrongful acts or omissions in the performance of the terms and conditions of this Agreement of the CONSTRUCTOR, its Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person.

10.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the CONSTRUCTOR, anyone directly or indirectly employed by the CONSTRUCTOR or anyone for whose acts the CONSTRUCTOR may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or

benefits payable by or for the CONSTRUCTOR under workers' compensation acts, disability benefit acts, or other employment benefit acts. The requirements for insurance are not intended to limit, qualify or restrict the liabilities and obligations otherwise assumed by the CONSTRUCTOR in this Agreement, including provisions concerning indemnification.

## 10.2 INSURANCE

10.2.1 Before commencing the Work, the CONSTRUCTOR shall purchase from and maintain with a company or companies lawfully authorized to do business in the State of Iowa such insurance as specified in Section 00 74 13 Project Requirements that will protect the CONSTRUCTOR from Claims set forth below which may arise out of or result from the CONSTRUCTOR's operations under the Contract and for which the CONSTRUCTOR may be legally liable, whether such operations be by the CONSTRUCTOR or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 10.2.1.1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- 10.2.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the CONSTRUCTOR's employees;
- 10.2.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONSTRUCTOR's employees;
- 10.2.1.4 claims for damages insured by standard personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the CONSTRUCTOR, or (b) by another person;
- 10.2.1.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- 10.2.1.6 claims for liability that may result from injuries or damage arising out of completed work;
- 10.2.1.7 claims for damages to existing adjacent property that may arise from the performance of the Work to the extent caused by the negligent acts or omissions of the CONSTRUCTOR
- 10.2.1.8 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- 10.2.1.9 claims involving contractual liability insurance applicable to the CONSTRUCTOR's obligations under section 10.1.

10.2.2 The CONSTRUCTOR shall take out insurance policies with requirements as specified in Section 00 74 13 Project Requirements, on a primary, non-contributory basis and issued by an insurance company or companies legally authorized to conduct business in the State of Iowa with an A. M. Best rating of A-, VII or better. The insurance requirements may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by following form Excess or Umbrella Liability policies.

10.2.3 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the Work. These Certificates and the insurance policies required by 10.2 shall contain a provision that coverages afforded under the policies will not be canceled or

allowed to expire until at least 30 days prior written notice has been given to the OWNER. If any of the foregoing insurance coverages are required to remain in force after final payment, the CONSTRUCTOR shall renew policies which expire during the period of required coverage and, prior to each renewal date, shall notify the OWNER of such renewal.

10.2.4 The insurance required by section 10.2 shall be written for not less than limits of liability specified in the Section 00 74 13 Project Requirements or required by law, whichever coverage is greater. Coverages, shall be written on an occurrence basis, and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment; except that products and completed operations coverage must be maintained for a minimum of two (2) years after final payment.

10.2.5 The CONSTRUCTOR shall either (a) require each Subcontractor to procure and to maintain, for the period of time required in section 10.2, Subcontractor's Liability Insurance of the type and in the same amounts as specified above or (b) insure the activities of Subcontractors in the CONSTRUCTOR's own policy.

### 10.3 PROPERTY INSURANCE

10.3.1 Unless specified otherwise in Section 00 74 13 Project Requirements and before work commences, the OWNER shall purchase and maintain Builder's Risk Insurance in an amount equal to the construction cost, less insurance exclusions until final payment has been made or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance or until no person or entity, other than the OWNER, has an insurable interest in the property.

The OWNER shall be the named insured on such policy. This insurance shall also name the CONSTRUCTOR, Subcontractors, Sub-subcontractors, and Material Suppliers as loss payees.

This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure (a) at least against the perils of fire, lightning, explosion (including boilers), windstorm, hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, terrorism, debris removal, flood, earthquake, earth movement, water damage, wind damage, collapse however caused; (b) resulting damage from defective design, workmanship or material; and (c) direct damage caused by interruption of gas, electric, water and steam service.

10.3.2 The Builders Risk Insurance provided by the OWNER shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The CONSTRUCTOR shall make arrangements for any insurance desired on such construction equipment.

10.3.3 The OWNER shall make available a copy of the policy for viewing by the CONSTRUCTOR on the OWNER's premises, at a location specified by the OWNER.

10.3.4 CONSTRUCTOR is required to immediately notify the OWNER upon discovery of any loss. If a claim is expected to be made against the OWNER's Builder's Risk Insurance policy, the CONSTRUCTOR must notify the OWNER within forty-eight (48) hours after discovery of the loss. An initial detailed written report of the loss must be furnished to the OWNER within ten (10) working days of the loss.

10.3.5 The CONSTRUCTOR shall be responsible for the deductible for each Claim made against the OWNER's Builder's Risk policy. Risk of loss or damage to the Work that is not covered by

insurance shall be the responsibility of the CONSTRUCTOR until the Date of Substantial Completion unless otherwise agreed to by the Parties.

#### 10.4 BONDS

10.4.1 Performance and Payment Bonds are required of the CONSTRUCTOR. Performance and Payment Bonds must be executed solely by corporations authorized to contract as surety in Iowa and who are not affiliated with or owned by the CONSTRUCTOR. Attorney's-in-fact who sign surety bonds must file with each bond a certified and effectively dated copy of their power of attorney. The penal sum of the bonds shall each be 100% of the original Contract Price, and shall provide coverage for any and all change orders unless otherwise instructed by the OWNER. The OWNER reserves the right to require that the CONSTRUCTOR provide a rider in an amount to be determined by the OWNER for any increase in the original Contract Price. The CONSTRUCTOR shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price, though the CONSTRUCTOR shall require that its surety waives any requirement to be notified of any alteration or extension of time. A copy of the CONSTRUCTOR's Payment Bond for the Project, if any, shall be furnished by the OWNER or the CONSTRUCTOR upon the Subcontractor's written request.

10.4.2 If CONSTRUCTOR is a Targeted Small Business, the CONSTRUCTOR may be eligible to receive a waiver of the performance, payment, or bid bond requirements pursuant to the provisions of the Iowa Satisfaction and Performance Bond Program, Chapter 12.44, of the Code of Iowa. Certification of eligibility to participate in the Iowa Satisfaction and Performance Bond Program is determined by the Department of Inspections and Appeals.

10.5 PROFESSIONAL LIABILITY INSURANCE To the extent the CONSTRUCTOR is required to procure design services in accordance with section 3.15, the CONSTRUCTOR shall require its design professionals to obtain professional liability insurance if required by Section 00 74 13 Project Requirements.

### ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

#### 11.1 SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1 OWNER SUSPENSION Should the OWNER order the CONSTRUCTOR in writing to suspend, delay, or interrupt the performance of the Work for the convenience of the OWNER and not due to any act or omission of the CONSTRUCTOR or any person or entity for whose acts or omissions the CONSTRUCTOR may be liable, then the CONSTRUCTOR shall immediately suspend, delay or interrupt that portion of the Work for the time period ordered by the OWNER. The Contract Price and the Contract Time shall be equitably adjusted by Change Order for the cost and delay resulting from any such suspension.

11.1.2 Any action taken by the OWNER that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

11.2 NOTICE TO CURE A DEFAULT If the CONSTRUCTOR persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the CONSTRUCTOR may be deemed in default. If the CONSTRUCTOR fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such

default with diligence and promptness, then the OWNER shall give the CONSTRUCTOR a second notice to correct the default within a three (3) Day period.

11.2.1 If the CONSTRUCTOR fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the OWNER without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to the CONSTRUCTOR; and (d) as the OWNER deems necessary, supply workers and materials, equipment and other facilities for the satisfactory correction of the default, and charge the CONSTRUCTOR the costs and expenses, including reasonable Overhead, profit and attorneys' fees.

11.2.2 In the event of an emergency affecting the safety of persons or property, the OWNER may immediately commence and continue satisfactory correction of such default without first giving written notice to the CONSTRUCTOR, but shall give prompt written notice of such action to the CONSTRUCTOR following commencement of the action.

### 11.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1 **TERMINATION BY OWNER FOR DEFAULT** If, within seven (7) Days of receipt of a notice to cure pursuant to section 11.2, the CONSTRUCTOR fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the OWNER may notify the CONSTRUCTOR and, the surety, that it intends to terminate the Agreement for default absent appropriate corrective action within fourteen (14) additional Days. After the expiration of the additional fourteen (14) Day period, the OWNER may terminate the Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to the OWNER under section 11.2. If the OWNER's costs arising out of the CONSTRUCTOR's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, the CONSTRUCTOR shall be liable to the OWNER for such excess costs. If the OWNER exercises its rights under this section, upon the request of the CONSTRUCTOR the OWNER shall furnish to the CONSTRUCTOR a detailed accounting of the costs incurred by the OWNER.

11.3.2 **USE OF CONSTRUCTOR'S MATERIALS, SUPPLIES, AND EQUIPMENT** If the OWNER or Others perform work under this section, the OWNER shall have the right to take and use any materials, supplies and equipment belonging to the CONSTRUCTOR and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies or equipment not consumed or incorporated in the Work shall be returned to the CONSTRUCTOR in substantially the same condition as when they were taken, reasonable wear and tear excepted.

11.3.3 If the CONSTRUCTOR files a petition under the Bankruptcy Code, the Agreement shall terminate if the CONSTRUCTOR or the CONSTRUCTOR's trustee rejects the Agreement, or if there has been a default and the CONSTRUCTOR is unable to give adequate assurance that the CONSTRUCTOR will perform as required by the Agreement or otherwise is unable to comply with the requirements for assuming the Agreement under the applicable provisions of the Bankruptcy Code.

11.3.4 The OWNER shall make reasonable efforts to mitigate damages arising from CONSTRUCTOR default, and shall promptly invoice the CONSTRUCTOR for all amounts due pursuant to sections 11.2 and 11.3.

11.3.5 If the OWNER terminates the Agreement for default, and it is later determined that the CONSTRUCTOR was not in default, or that the default was excusable under the terms of the



Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 11.4.

#### 11.4 TERMINATION BY OWNER FOR CONVENIENCE

11.4.1 Upon written notice to the CONSTRUCTOR, the OWNER may, without cause, terminate this Agreement effective upon the date identified by the OWNER in the written notice. The CONSTRUCTOR shall immediately stop the Work, follow the OWNER's instructions regarding shutdown and termination procedures, and strive to minimize any further costs. Provisions of law as contained in Chapter 573A of the Code of Iowa, current edition, (which pertains to termination of contracts for construction of public improvements when Work thereon is stopped because of a national emergency) shall apply to and be a part of this Contract and binding upon all Parties hereto, including Subcontractors and Sureties.

11.4.2 If the OWNER terminates the Agreement for Convenience, the CONSTRUCTOR shall be paid: (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred as a result of the termination but not including Overhead or profit on Work not performed;

#### 11.5 CONSTRUCTOR'S RIGHT TO TERMINATE

11.5.1 Upon seven (7) Days' written notice to the OWNER, the CONSTRUCTOR may terminate the Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the CONSTRUCTOR for any of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the CONSTRUCTOR, materials are not available; or (c) suspension by the OWNER for convenience pursuant to section 11.1

11.5.2 In addition, upon seven (7) Days' written notice to the OWNER, the CONSTRUCTOR may terminate the Agreement if the OWNER: (a) assigns the Agreement over the CONSTRUCTOR's reasonable objection; or (b) fails to pay the CONSTRUCTOR in accordance with the Agreement and the CONSTRUCTOR has complied with section 9.5; or (c) otherwise materially breaches the Agreement.

11.5.3 Upon termination by the CONSTRUCTOR in accordance with section 11.5, the CONSTRUCTOR shall be entitled to recover from the OWNER payment for all Work properly executed.

11.6 If this Agreement is terminated for any reason, the CONSTRUCTOR shall: (a) execute and deliver to the OWNER all papers, documents, and submissions required under this Agreement, whether in draft or final form; (b) take all action required to assign, transfer, and vest in the OWNER the rights of the CONSTRUCTOR to all materials, supplies and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents; (c) exert reasonable effort to reduce to a minimum the OWNER's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination; (d) cancel any subcontracts, orders, and commitments as the OWNER directs; and (e) sell at prices approved by the OWNER any materials, supplies and equipment as the OWNER directs, with all proceeds paid or credited to the OWNER.

11.7 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of the Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.



## ARTICLE 12 DISPUTE MITIGATION – DIRECT DISCUSSIONS

- 12.1 **WORK CONTINUANCE AND PAYMENT** Unless otherwise agreed in writing, the CONSTRUCTOR shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If the CONSTRUCTOR continues to perform, the OWNER shall continue to make payments in accordance with this Agreement.
- 12.2 **DIRECT DISCUSSIONS** If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives or administrators of the Parties in writing that resolution was not effected. Upon receipt of such notice, the senior executives or administrators of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. The time periods identified in this section shall be extended upon the reasonable request of either party.
- 12.3 **LIEN RIGHTS** Nothing in this article shall limit any rights or remedies not expressly waived by the CONSTRUCTOR that the CONSTRUCTOR may have under lien laws.

## ARTICLE 13 MISCELLANEOUS

- 13.1 **EXTENT OF AGREEMENT** Except as expressly provided, the Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. The Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 13.2 **ASSIGNMENT** Except as to the assignment of proceeds, neither Party shall assign its interest in the Agreement without the written consent of the other Party. The terms and conditions of the Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that the OWNER may assign the Agreement to a wholly owned subsidiary of the OWNER when the OWNER has fully indemnified the CONSTRUCTOR or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the CONSTRUCTOR than this Agreement. If such assignment occurs, the CONSTRUCTOR shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the OWNER's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.
- 13.3 **GOVERNING LAW** The Agreement shall be governed by the laws of the State of Iowa, and any action or suit arising out of or related to this Agreement shall be initiated in the courts in the county in which the project is located.
- 13.4 **SEVERABILITY** The partial or complete invalidity of any one or more provisions of the Agreement shall not affect the validity or continuing force and effect of any other provision.
- 13.5 **NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right, nor shall such action or failure to act constitute approval or acquiescence in a breach unless specifically agreed to in writing.

13.6 TITLES AND GROUPINGS The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.7 JOINT DRAFTING The Parties expressly agree that the Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, the Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

#### 13.8 ELECTRONIC TRANSACTIONS AND EXECUTION IN COUNTERPARTS.

13.8.1 To the fullest extent permitted by Iowa Code Chapter 554D, the Parties agree that electronic records, signatures, systems, formats, transmissions and communications (collectively, Electronic Transactions) may be utilized for this Project and this Agreement and all related documents, records, submissions, approvals, and communications (Ancillary Agreements). The Parties agree that electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. The Parties further agree that Electronic Transactions may be relied on for the purposes of binding information transfer for this Project. Unless otherwise agreed to in writing by the Parties, the following shall be deemed an acceptable electronic signature for the purposes of this subsection: an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

In the event the laws, rules, or regulations of a third party governmental agency or entity do not permit the use of Electronic Transactions or Electronic Signatures, then this section shall not apply but only to the extent necessary to comply with the laws, rules, or regulations of the third party governmental agency or entity.

13.8.2 This Agreement, and any Ancillary Agreements, may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement, or any Ancillary Agreement, transmitted by any means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement.

13.9 RIGHTS AND REMEDIES 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.

#### 13.10 CODE OF FAIR PRACTICES

13.10.1 During the performance of this Contract, the CONSTRUCTOR agrees as follows:

13.10.1.1 The CONSTRUCTOR will not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age or physical or mental disability, or status as a U.S. veteran. The CONSTRUCTOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, national origin, sex, age, physical or mental disability, or status as a U.S. veteran except where it relates to a bona fide occupational qualification. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The

CONSTRUCTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Board of Regents, State of Iowa setting forth provisions of this nondiscrimination clause;

- 13.10.1.2 The CONSTRUCTOR will in all solicitations or advertisements for employees placed by or on behalf of the CONSTRUCTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex, age, physical or mental disability, or status as a U.S. veteran except where it relates to a bona fide occupational qualification;
- 13.10.1.3 The CONSTRUCTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the CONSTRUCTOR's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- 13.10.1.4 The CONSTRUCTOR will comply with all relevant provisions of state and federal laws and regulations, and all provisions relevant to fair application of the rules and regulations of the Board of Regents, State of Iowa and of its institutions. The CONSTRUCTOR will furnish all information and reports requested by the Board of Regents, State of Iowa or its institutions or required by or pursuant to the rules and regulations thereof and will also permit access to its payroll and employment records by the Board of Regents, State of Iowa or its institutional representatives for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause;
- 13.10.1.5 The event of the CONSTRUCTOR's noncompliance with the nondiscrimination clauses of this Contract or with any of the aforesaid rules, regulations or requests, this Contract may be cancelled, terminated or suspended in whole or in part and the CONSTRUCTOR may be declared ineligible for further contracts with the Board of Regents, State of Iowa. In addition, the Board of Regents, State of Iowa or its institutions may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Code of Iowa, as heretofore and hereafter amended, or by the rules and regulations of the Board of Regents, State of Iowa or its institutions or as otherwise provided by law; and
- 13.10.1.6 The CONSTRUCTOR will include the provisions of subsections 13.10.1.1 through 13.10.1.5 hereof in every subcontract and purchase order unless specifically exempted by approval of the Board of Regents, State of Iowa, in accordance with the rules and regulations of said Board, so that such provisions will be binding on each Subcontractor and vendor. The CONSTRUCTOR will take such action with respect to any Subcontractor or purchase order as the Board of Regents, State of Iowa or its institutions or the authorized representative thereof, may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the CONSTRUCTOR becomes involved in, or is threatened with, litigation by a Subcontractor or vendor as a result of such direction by the Board of Regents, State of Iowa or its institutions, the CONSTRUCTOR may request the State of Iowa to enter into such litigation to protect the interests of the State of Iowa.

13.11 NOTICES Any notice, demand or communication required or permitted to be delivered or given by the provisions of this Agreement shall be deemed to have been effectively delivered or given and received on the date (a) personally delivered to the individual identified below, (b) when deposited by registered or certified mail, with postage and charges prepaid and addressed to individual at the address identified below,

or (c) when sent and actually received through electronic mail by the OWNER'S Representative and the CONSTRUCTOR'S project manager.

## ARTICLE 14 CONTRACT DOCUMENTS

14.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence are listed in Section 00 52 13 Form of Agreement Between OWNER and CONSTRUCTOR.

### 14.2 INTERPRETATION OF CONTRACT DOCUMENTS

14.2.1 The DRAWINGS and SPECIFICATIONS are complementary. If Work is shown only on one but not on the other, the CONSTRUCTOR shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them.

14.2.2 In case of conflicts between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. In any case of omissions or errors in figures, DRAWINGS or SPECIFICATIONS, the CONSTRUCTOR shall immediately submit the matter to the OWNER for clarification. The OWNER's clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Contract Price or dispute mitigation and resolution.

14.2.3 Where figures are given, they shall be preferred to scaled dimensions.

14.2.4 Unless otherwise specifically defined in the Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

14.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to the Agreement; (b) the Agreement; (c) subject to subsection 14.2.2 the DRAWINGS (large scale governing over small scale), SPECIFICATIONS and addenda issued prior to the execution of the Agreement or signed by both Parties; (d) information furnished by the OWNER pursuant to section 4.2 or designated as a Contract Document in section 14.1; (e) other documents listed in the Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.