

# **Consent Agenda**

**May 4, 2021**

**MET IN REGULAR SESSION**

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

**PLEDGE OF ALLEGIANCE**

**1. CONSENT AGENDA**

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

- A. April 27, 2021, Minutes as read.
- B. Publication of Claims allowed for April 2021
- C. Communications - Employment of Colleen Sylvis, Matthew Spitznagle, and Rachele Holt as Telecommunicator

UNANIMOUS VOTE. Motion Carried.

**2. SCHEDULED SESSIONS**

Chief Carmody of the Council Bluffs Police Department appeared before the Board to provide an update on the Southwest Iowa Training Facility and the 100-yard Range Project. Discussion only. No action taken.

Jim Hughes, Mark Hughes, Sandy Winton from Jim Hughes Real Estate and John Jorgensen from HGM appeared before the Board for a discussion on potential subdivision at 240<sup>th</sup> St and Pioneer Trail. Discussion only. No action taken.

Motion made by Schultz, second by Shea, to postpone signing of contract with Mecco-Henne Contracting for the Courthouse Addition Project until May 11<sup>th</sup>, 2021.

Roll Call Vote: AYES: Belt, Grobe, Schultz, Shea. NAYS: Wichman. Motion Carried.

Motion made by Wichman, second by Schultz, to approve and authorize Chairman to sign certificate of substantial completion for the Courthouse Renovation Project.

UNANIMOUS VOTE. Motion Carried.

Motion made by Schultz, second by Shea, to approve job description for Community Health Organizer. UNANIMOUS VOTE. Motion Carried.

Discussion was held on a services agreement with Field Day Development. Discussion only. No action taken.

**3. OTHER BUSINESS**

Motion made by Schultz, second by Shea, to approve and authorize Chairman to sign the E-Verify Memorandum of Understanding for Employer Access Portal, between the Department of Homeland Security (DHS), Pottawattamie County, and E-Verify. UNANIMOUS VOTE. Motion Carried.

Motion made by Schultz, second by Shea, to approve change to Employee Handbook Policy #403 Insurance/Retirement Programs. UNANIMOUS VOTE. Motion Carried.

Motion made by Shea, second by Grobe, to increase employee contribution of health benefits to 11%. UNANIMOUS VOTE. Motion Carried.

**4. RECEIVED/FILED**

- A. Salary Actions
  - 1) Recorder – Payroll Status Change for Paul Nelson
  - 2) Secondary Roads – Payroll Status Change for Shawna Hedegaard, Brady Schroder
  - 3) WIC – Payroll Status Change for Wei Kay Eng

**5. SCHEDULED SESSIONS**

Finance and Budget Director Mitch Kay appeared before the Board for a Budget Study Session. Discussion only. No action taken.

**6. ADJOURN**

Motion by Shea, second by Wichman, to adjourn meeting.  
UNANIMOUS VOTE. Motion Carried.

THE BOARD ADJOURNED SUBJECT TO CALL AT 12:30 P.M.

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Scott A. Belt, Chairman

ATTEST: 

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Melvyn Houser, Pottawattamie County Auditor

APPROVED: May 11, 2021  
PUBLISH: X

**\* (required) Name of Legal Entity (The name of the individual, partnership, corporation or other similar legal entity that is receiving the income from the alcoholic beverages sold)**

Breezy Hills Winery, LLC

**\* (required) Name of Business (D/B/A)**

Breezy Hills Vineyard

**Indicate how the business will be operated**

Limited Liability Company

**\* (required) Federal Employer ID #**

20-0245002

**\* (required) Business Number of Secretary of State**

281877

**Tentative Expiration Date**

May 31, 2021

### Premises Information

#### Address of Premises:

Address or location

31735 Tamarack Rd, Minden, Iowa,

Search by a location name or address to automatically populate the address fields below (optional)

**\* (required) Premises Street**

31735 Tamarack Rd

**Premises Suite/Apt Number**

**\* (required) Premises City**

Minden

**Premises State**

Iowa

**\* (required) Premises Zip/Postal Code**

51553

**Premises County**

**\* (required) Local Authority**

County of Pottawattamie

**Control of Premises**

**Is the capacity of your establishment over 200?**

lease

No

**Are other liquor, wine or beer businesses accessible from the interior of your premises?**

**Equipped with tables and seats to accommodate a minimum of 25?**

No

Yes

**\* (required) # of Floors:**

**# of Bathrooms:**

1

2

**Premises Type**

**Does your premises conform to all local and state health, fire and building laws and regulation?**

Specialty Shop

True

### Contact Information

**\* (required) Contact Name**

**\* (required) Business Phone**

Andrew or Roberta

(712) 485-2083

**\* (required) Email Address**

**\* (required) Phone**

hillsideacres@msn.com

(712) 485-2083

Same as Premises Address

### Mailing Address:

**Address or location**

31735 Tamarack Rd,Minden,Iowa,

Search by a location name or address to automatically populate the address fields below (optional)

**Mailing Street**

**Mailing Suite/Apt Number**

31735 Tamarack Rd

**Mailing City**

Minden

**Mailing State**

Iowa

**Mailing Zip/Postal Code**

51553

**Mailing County**

Previous

Next

**Class C Native Wine Permit** Selected

Allows for the sale of Iowa native wine for on-premises consumption. Also allows carry-out sales of Iowa native wine. Sunday sales are included.

**Privileges**

**Outdoor Service** Selected

Allows the selling/serving of alcoholic beverages permitted by the license/permit in a designated, adjacent outdoor area.

**Sunday Sales** Selected

Allows selling/serving of alcoholic beverages permitted by the license/permit on Sundays.

**Living Quarters** Select

Separates private living quarters from the licensed premises; protects licensee/permittee from warrantless searches of living quarters.

**\* (required) Please provide a description of the area you intend to use for the Outdoor Service Privilege and explain its relationship to the currently-licensed premises**

Previous

Next

**Length of License Requested (Choose one of the following):**

12 Month

**\* (required) Tentative Effective Date**

Jun 1, 2020

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Next



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7741 20 200 001

--- Permanent Property Address ---

MORSE, DARRELL E-ROBERTA J TRUST  
31735 TAMARACK RD  
MINDEN, IA 51553

----- Mailing Address -----

MORSE, DARRELL E-ROBERTA J TRUST  
31735 TAMARACK RD  
MINDEN, IA 51553

District: 059 MINDEN TWP/TRI-CENTER SCH

District: 059 MINDEN TWP/TRI-CENTER SCH

===== REAL ESTATE TAXES ON TREASURER'S WEBPAGE =====

Go to: <https://www.municipalonlinepayments.com/pottawattamiecoia/tax/search/detail/774120200001>

===== TAX DESCRIPTION\* =====

\* Not to be used on legal documents

MINDEN TWP 20-77-41 EXC RR NW NE

===== ASSESSED VALUE =====

\* Class is for Assessment purposes only - Not Zoning

land	dwelling	land	building	total	ag acres	year	class*
\$46,600	\$137,300		\$21,100	\$205,000	38.430	2020	A
\$46,600	\$137,300		\$21,100	\$205,000	38.430	2021	A

===== EXEMPTIONS/PROGRAMS =====

\* Credit information is no longer available online

===== OWNERS =====

\* Book/Page LINKS TO RECORDER'S WEBPAGE

- 1 D MORSE, DARRELL E-ROBERTA J TRU book/page: [2012/15022](#) D
- 2 T MORSE, DARRELL E
- 3 T MORSE, ROBERTA J

===== SALES HISTORY =====

Sale Date	Amount	Code	Book/Page	
10/01/2012	0	<a href="#">D1</a>	<a href="#">2012/15022</a>	<a href="#">multiple parcel sale</a>
08/29/1989	68000	<a href="#">D017</a>	0090/05030	<a href="#">multiple parcel sale</a>
03/08/1976	68000	<a href="#">C000</a>	0077/08907	<a href="#">multiple parcel sale</a>

===== ASSESSMENT DATA =====

PDF: 27    MAP: MINDEN TWP

Date Reviewed: 07/17/18 KK

LAND.....1674010 sqFt      38.43 acres

Residence 1 of 1 -- Single-Family

BUILDING.....1 Story Frame    6/2 Rooms Above/Below    3/0 Bedrooms Above/Below    1176 SF Base    AC

Built:1971    Normal    Bsmt: Full    Bsmt Finish: 400 SF    Attic Finish: None

FINISH.....Foundation: C Blk    Exterior: Vinyl    Roof: Asph / Gable

Interior: Drwl    Flooring: Carpet / Vinyl

ADDITIONS....Addition 1: 224 SF    1 Story Frame    Built: 1992    AC    Bsmt SF: 0

PLUMBING.....1 Full Bath    1 Shower Stall Bath

PORCHES.....112 SF    1S Frame Enclosed    No Bsmt

DECK/PATIOS..522 SF    Wood Deck-Low

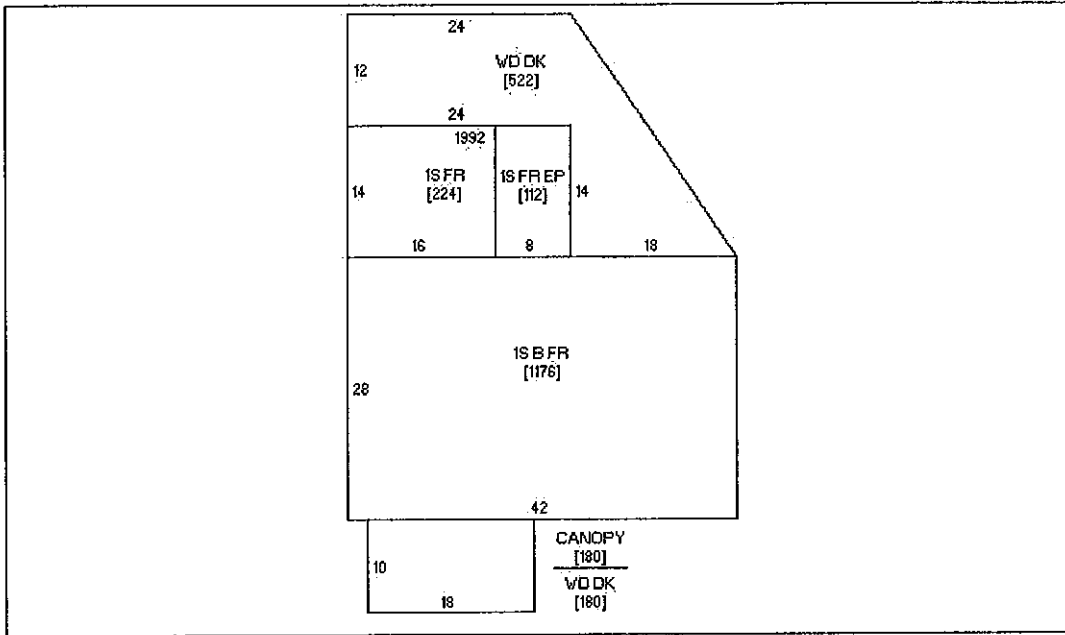
180 SF    Fbgls/Mtl Roof-Med

180 SF    Wood Deck-Med

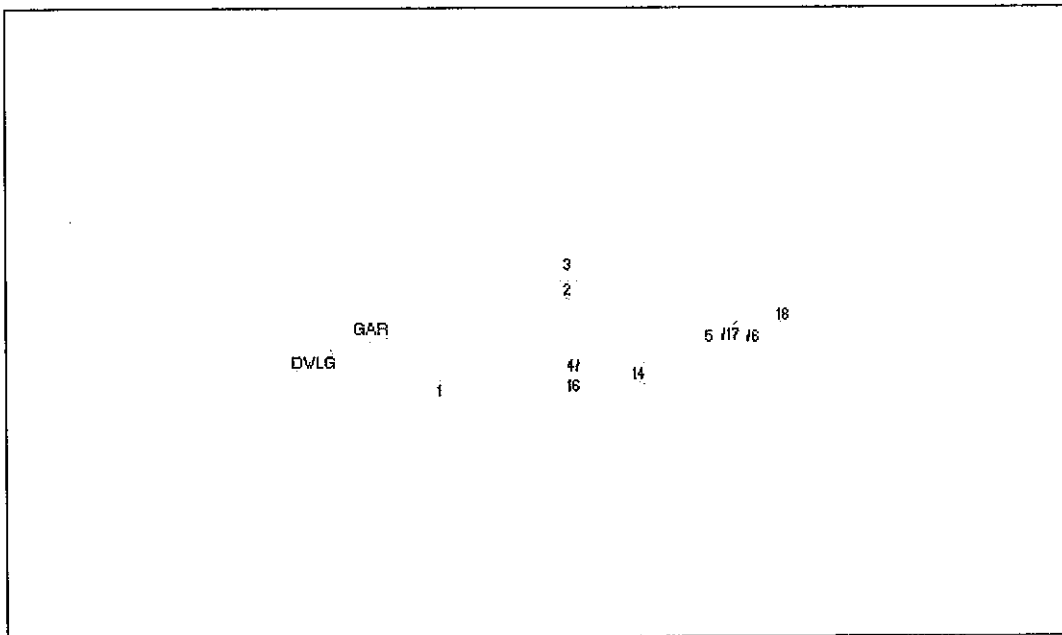
GARAGES(1)...1 Detached

Garage 1: 784 SF Det Frame    28x28    Built: 1992

##	Outbuilding Type / Description	Dimension	Cap/Area	Year
1	Bin - Steel Grain Storage/PP #1-STL	18 x 13	2818 Bu	1965
2	Bin - Steel Grain Storage/PP #2-STL	18 x 17	3685 Bu	1965
3	Bin - Steel Grain Storage/PP #3-STL	21 x 22	6540 Bu	1978
4	Steel Utility Building/PP #4-FR/MTL/P	32 x 64	2048 SF	1975
5	Steel Utility Building/PP #5-GIFT SHOP/WINERY	24 x 78	1872 SF	1976
6	Confinement - Deluxe Open/PP #14-C BLK N.V	16 x 56	896 SF	1982
7	Lean-To/PP #16-POLE TO #4	16 x 64	1024 SF	1975
8	Addition to Bldg/PP #17-POLE/FR ADDN TO #5	24 x 24	576 SF	2010
9	Steel Utility Building/PP #18-STL BLDG/ WD FR "PRODUCTION ROOM"	32 x 64	2048 SF	2011



31735 TAMARACK RD, MORSE, DARRELL E-ROBERTA J TRUST



31735 TAMARACK RD, MORSE, DARRELL E-ROBERTA J TRUST



31735 TAMARACK RD, MORSE, DARRELL E-ROBERTA J TRUST, 1 09/20/2012

[Zoom Out](#) [Zoom In](#)



2400ft x 2400ft

Click any parcel to go to its web page  
See [more maps](#) at the [County GIS Department](#).

As of:

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**TO:** Lea Voss, County Treasurer  
Andrew Brown, County Sheriff  
Matt Wyant, County Planning Director

**FROM:** Gina Hatcher

Request for County Department Comments

**DATE:** April 28, 2021

**ESTABLISHMENT:** RENEWAL- BREEZY HILLS VINEYARD

**OWNER:** see attached

**LEGAL DESCRIPTION:** See attached property record.

The Auditor has received the attached request for the above class permits/sales/services. Please supply the following information for the Board of Supervisors within five (5) working days. Additional explanation may be given in the form of comments below and/or attachments.

DEPARTMENT	COMMENTS	YES	NO
TREASURER	Free from certified taxes and special assessments	✓	
PLANNING	Properly zoned		
	Nuisance violations		
	Septic system violations		
SHERIFF	Complaints received		
	Citations issued at this establishment		
	Owner convicted of a felony within the last 5 years		

**COMMENTS**

**Signature**

*Lea Voss*

TO: Lea Voss, County Treasurer  
Andrew Brown, County Sheriff  
Matt Wyant, County Planning Director

FROM: Gina Hatcher

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	Nuisance violations		
	Septic system violations		
SHERIFF	Complaints received		X
	Citations issued at this establishment		X
	Owner convicted of a felony within the last 5 years		X

COMMENTS

Signature

*AB 78.1*

**TO:** Lea Voss, County Treasurer  
Andrew Brown, County Sheriff  
Matt Wyant, County Planning Director

**FROM:** Gina Hatcher

Request for County Department Comments

**DATE:** April 28, 2021

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**OWNER:** see attached

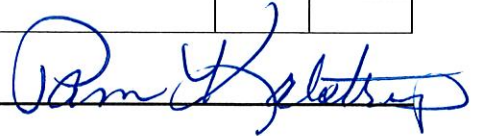
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DEPARTMENT	COMMENTS	YES	NO
TREASURER	Free from certified taxes and special assessments		
PLANNING	Properly zoned	✓	
	Nuisance violations		✓
	Septic system violations		✓
SHERIFF	Complaints received		
	Citations issued at this establishment		
	Owner convicted of a felony within the last 5 years		

COMMENTS

Signature



**\* (required) Name of Legal Entity (The name of the individual, partnership, corporation or other similar legal entity that is receiving the income from the alcoholic beverages sold)**

lyle Ditmars

**\* (required) Name of Business (D/B/A)**

Ditmars Orchard and Vineyard

**Indicate how the business will be operated**

Sole Proprietor

**Federal Employer ID #**

**Tentative Expiration Date**

May 31, 2020

**Premises Information**

**Address of Premises:**

**Address or location**

19475 225th Street,Council Bluffs,Iowa,Pottawattamie

Search by a location name or address to automatically populate the address fields below (optional)

**\* (required) Premises Street**

19475 225th Street

**Premises Suite/Apt Number**

**\* (required) Premises City**

Council Bluffs

**Premises State**

Iowa

**\* (required) Premises Zip/Postal Code**

51503

**Premises County**

Pottawattamie

**\* (required) Local Authority**

County of Pottawattamie

**Control of Premises**

**Is the capacity of your establishment over 200?**

Own

No

Are other liquor, wine or beer businesses accessible from the interior of your premises?

Equipped with tables and seats to accommodate a minimum of 25?

No

Yes

\* (required) # of Floors:

# of Bathrooms:

1

2

Premises Type

Does your premises conform to all local and state health, fire and building laws and regulation?

Specialty Shop

True

### Contact Information

\* (required) Contact Name

\* (required) Business Phone

Lyle ditmars

(712) 256-7053

\* (required) Email Address

\* (required) Phone

lyleditmars@hotmail.com

(402) 578-3553

Same as Premises Address

### Mailing Address:

Address or location

19475 225th Street, Council Bluffs, Iowa,

Search by a location name or address to automatically populate the address fields below (optional)

Mailing Street

Mailing Suite/Apt Number

19475 225th Street



**Mailing City**

Council Bluffs

**Mailing State**

Iowa

**Mailing Zip/Postal Code**

51503

**Mailing County**

Previous

Next

**Class B Beer Permit** Selected

For taverns, bars, restaurants, etc. Allows commercial establishments to sell beer for on-premises consumption. Also allows carry-out sales of beer.

**Sub-Permits****Class B Native Wine Permit** Select

Allows for the sale of Iowa native wine for off-premises consumption. Sunday sales are included. No sales by the drink.

**Class C Native Wine Permit** Selected

Allows for the sale of Iowa native wine for on-premises consumption. Also allows carry-out sales of Iowa native wine. Sunday sales are included.

**Special Class A Beer Permit** Select

Allows for the manufacture of beer and high alcoholic content beer on the premises for on-premises consumption

**Privileges****Outdoor Service** Selected

Allows the selling/serving of alcoholic beverages permitted by the license/permit in a designated, adjacent outdoor area.

**Sunday Sales** Selected

Allows selling/serving of alcoholic beverages permitted by the license/permit on Sundays.

**Living Quarters** Select

Separates private living quarters from the licensed premises; protects licensee/permittee from warrantless

searches of living quarters.

**\* (required) Please provide a description of the area you intend to use for the Outdoor Service Privilege and explain its relationship to the currently-licensed premises**

Previous

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**Length of License Requested (Choose one of the following):**

12 Month

**\* (required) Tentative Effective Date**

Jun 1, 2020

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7543 14 301 001

--- Permanent Property Address ---  
 DITMARS, LYLE W  
 19475 225TH ST  
 COUNCIL BLUFFS, IA 51503

----- Mailing Address -----  
 DITMARS, LYLE W  
 505 REDWOOD DR  
 COUNCIL BLUFFS, IA 51503-8612

District: 024 GARNER TWP/UNDERWOOD SCH

REAL ESTATE TAXES ON TREASURER'S WEBPAGE

Go to: <https://www.municipalonlinepayments.com/pottawattamiecoia/tax/search/detail/754314301001>

TAX DESCRIPTION\*

\* Not to be used on legal documents

GARNER TWP 14-75-43 NW SW

ASSESSED VALUE

\* Class is for Assessment purposes only - Not Zoning

land	dwelling	land	building	total	ag acres	year	class*
\$43,600	\$0		\$18,200	\$61,800	37.000	2020	A
\$43,600	\$0		\$20,700	\$64,300	37.000	2021	A

EXEMPTIONS/PROGRAMS

\* Credit information is no longer available online

OWNERS

\* Book/Page LINKS TO RECORDER'S WEBPAGE

1 D DITMARS, LYLE W                      book/page: [2015/1560](#) D

SALES HISTORY

Sale Date	Amount	Code	Book/Page	
12/23/2014	0	<a href="#">D1</a>	<a href="#">2015/01560</a>	<a href="#">multiple parcel sale</a>
11/12/1993	77500	<a href="#">D050</a>	<a href="#">0094/16118</a>	<a href="#">multiple parcel sale</a>

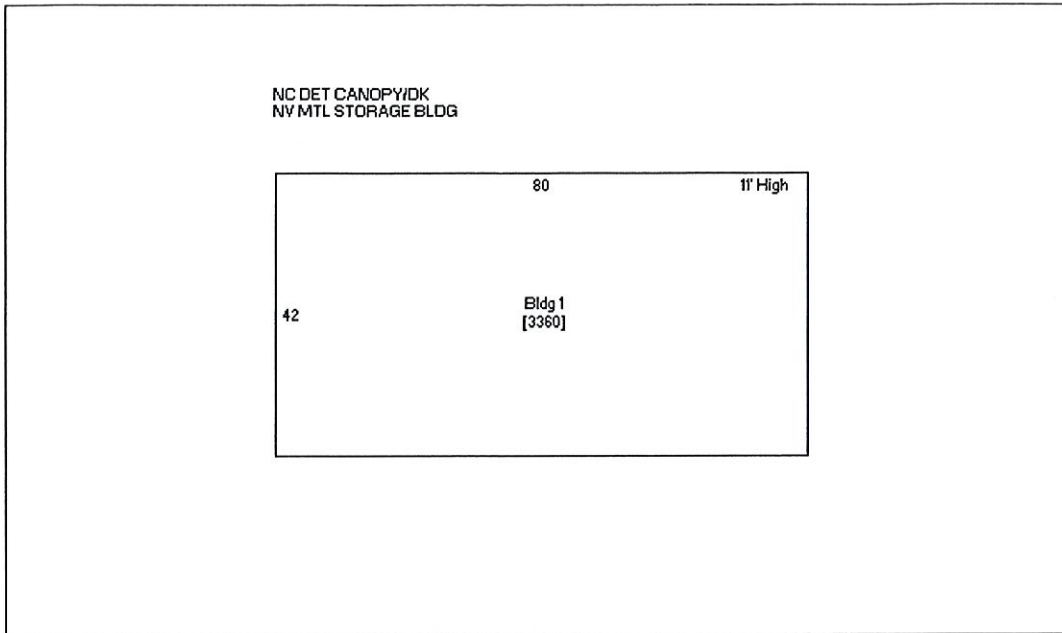
ASSESSMENT DATA

PDF: 27    MAP: GARNER TWP

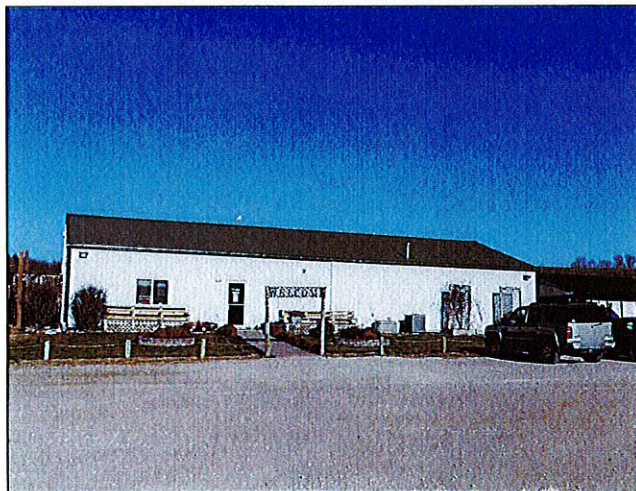
Date Reviewed: 11/25/20 HH

LAND.....1611719 sqFt      37 acres

Commercial Building 1 of 1 -- Metal Warehouse - Milled Wood Frame (602)  
 STRUCTURE....1 story    3360 base SF    0 bsmt SF    3360 gross SF  
 Year Built: 2003    Eff Year: 2003    Condition: Above Normal  
 VERTICALS...Ext Wall:    Metal/ Frm/ Insul (<50' Wide)  
                   Int Wall:    Drywall or Equiv.  
                   Windows:    Aluminum  
 HORIZONTALS..Roof:    Metal/ Frm/ Insul (< 50' Wide)  
                   Ceiling:    Unfinished  
                                   Drywall  
                   Struc Floor: R'Concrete  
                   Framing:    Wood - Average  
                   HVAC:    Forced Hot Air  
 PLUMBING....Toilet Room (1)  
                   Rough Plumbing (1)  
 ADJUSTMENTS..Interior - finish (1120)  
                   Liner - compo (SFSA) (1218)  
 BLDG EXTRAS..1 Cold Storage: 192 SF, Cooler, 0 SFSA Door, No Door  
                   1 Door: O.H. Door - Manual, 12 Ft Wide, 10 Ft High  
 ## Outbuilding Type / Description                      Dimension    Cap/Area    Year  
   1 Steel Utility Building/STL BLDG                      30 x 40      1200 SF    2020



19475 225TH ST, DITMARS, LYLE W



19475 225TH ST, DITMARS, LYLE W, 1 11/19/2020

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2400ft x 2400ft

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As of:

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**TO:** Lea Voss, County Treasurer  
Andrew Brown, County Sheriff  
Matt Wyant, County Planning Director

**FROM:** Gina Hatcher

Request for County Department Comments

**DATE:** April 28, 2021

**ESTABLISHMENT:** RENEWAL- DITMARS ORCHARD AND VINEYARD

**OWNER:** see attached

**LEGAL DESCRIPTION:** See attached property record.

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DEPARTMENT	COMMENTS	YES	NO
TREASURER	Free from certified taxes and special assessments	✓	
PLANNING	Properly zoned		
	Nuisance violations		
	Septic system violations		
SHERIFF	Complaints received		
	Citations issued at this establishment		
	Owner convicted of a felony within the last 5 years		

**COMMENTS**

**Signature**

*Lea A Voss*



TO: Lea Voss, County Treasurer  
Andrew Brown, County Sheriff  
Matt Wyant, County Planning Director

FROM: Gina Hatcher

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SHERIFF	Complaints received		X
	Citations issued at this establishment		X
	Owner convicted of a felony within the last 5 years		X

COMMENTS

Signature

*Andrew Brown*

**TO:** Lea Voss, County Treasurer  
Andrew Brown, County Sheriff  
Matt Wyant, County Planning Director

**FROM:** Gina Hatcher

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**OWNER:** see attached

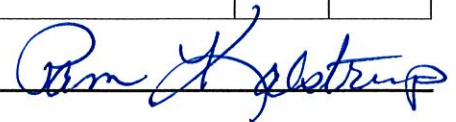
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	Septic system violations		✓
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	Owner convicted of a felony within the last 5 years		

COMMENTS

Signature



# **Scheduled Sessions**

**Chief Deputy Jeff Theulen, Lt. Sam Arkfeld, Bob  
Anderson/Director, Communications**

**Discussion and/or decision to approve:  
Tower Lease Agreement with Omaha Cellular  
Telephone Company d/b/a Verizon Wireless.**

Prepared by and upon recording  
Please return to:

Ginsberg Jacobs LLC  
300 South Wacker Drive  
Suite 2750  
Chicago, Illinois 60606  
Attn: Steven F. Ginsberg, Esq.  
(Site Name: OMA Carson DT)

Parcel ID No.: 744002400015

#### MEMORANDUM OF TOWER LEASE AGREEMENT

This Memorandum of Tower Lease Agreement (“**Memorandum**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between **Pottawattamie County**, with its principal offices located at 227 S. 6<sup>th</sup> Street, Council Bluffs, Iowa 51501, hereinafter designated “**LESSOR**” and **Omaha Cellular Telephone Company d/b/a Verizon Wireless**, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter referred to as “**LESSEE**”. LESSOR and LESSEE are at times collectively referred to hereinafter as the “**Parties**” or individually as the “**Party**”.

1. LESSOR and LESSEE entered into a Tower Lease Agreement (the “**Agreement**”) on \_\_\_\_\_, 2021 for an initial term of five (5) years, commencing on the Commencement Date. The Agreement shall automatically be extended for four (4) additional five (5) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.
2. LESSOR hereby leases to LESSEE a portion of that a portion of that certain space (the “**Tower Space**”) on the LESSOR's tower, hereinafter referred to as the “**Tower**”, located at 40790 Hwy 92, Carson, Pottawattamie County, Iowa, as shown on the Tax Map of the City of Carson as Parcel ID No. 744002400015, and substantially described on Exhibit A (the entirety of LESSOR's property is referred to hereinafter as the “**Property**”), together with a 15' x 28' or 420 square foot parcel of land (the “**Land Space**”) sufficient for the installation of LESSEE's communications equipment; together with the non-exclusive right (“**Right of Way**”) for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, over the Property to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of

communications equipment, together with the right to install and maintain utility wires, poles, cables, fiber optic cables, conduits, and pipes over, under, or along a ten foot (10') wide right-of-way ("**Utility Right of Way**") extending from the nearest public right-of-way, over and through the Property between the Land Space and the Tower Space. The Tower Space, Land Space, Right of Way and Utility Right of Way are hereinafter collectively referred to as the "**Premises**". The Premises are described in Exhibit C attached hereto and made a part hereof, and as shown on the plat of survey attached hereto and incorporated herein as Exhibit C. In the event any public utility is unable to use the aforementioned right-of-way, LESSOR has agreed to grant an additional right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

3. The Commencement Date of the Agreement, of which this is a Memorandum, is as set forth in the Agreement.
4. LESSEE has a right of first refusal to purchase the Premises during the initial term and all renewal terms of the Agreement.
5. The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of LESSOR and LESSEE.

[Signature Page To Follow]

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, LESSOR and LESSEE have caused this Memorandum to be duly executed on the date first written hereinabove.

**LESSOR:**

**Pottawattamie County**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**LESSEE:**

**Omaha Cellular Telephone Company d/b/a  
Verizon Wireless**

**By: Cellco Partnership, Its Managing  
General Partner**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

[Acknowledgments Follow On Next Page]

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

**LESSOR ACKNOWLEDGEMENT**

On this \_\_\_ day of \_\_\_\_\_, 2021, before me, \_\_\_\_\_, the undersigned Notary Public, duly commissions and sworn, personally appeared, \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the \_\_\_\_\_ of **Pottawattamie County**, whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official Notarial Seal, this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF ILLINOIS )  
 )ss.  
COUNTY OF COOK )

**LESSEE ACKNOWLEDGEMENT**

On this \_\_\_ day of \_\_\_\_\_, 2021, before me, \_\_\_\_\_, the undersigned Notary Public, duly commissions and sworn, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the \_\_\_\_\_ of **Omaha Cellular Telephone Company d/b/a Verizon Wireless**, the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official Notarial Seal, this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

ALL THAT PARCEL OF LAND IN THE IN THE COUNTY OF POTTAWATTAMIE AND STATE OF IOWA AS MORE FULLY DESCRIBED IN DEED DOCUMENT NUMBER 98-3427 AND PARCEL # 744002400015, BEING KNOWN AND DESIGNATED AS:

A PARCEL OF LAND LOCATED IN THE SE 1/4 SE 1/4 OF SECTION 2, T74N, R40W, OF THE 5TH P.M., POTTAWATTAMIE COUNTY, IOWA, AS SHOWN ON PLAT OF SURVEY EXHIBIT "A", ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF. SAID PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SE CORNER OF SAID SECTION 2, THENCE N 90 DEGREES 00'00"W,126.14 FEET ALONG THE SOUTH LINE OF SAID SECTION 2, THENCE N0 DEGREES 00'00" W, 49.69 FEET TO THE POINT OF BEGINNING, THENCE N88 DEGREES 52'28" W, 122.17 FEET, THENCE S84 DEGREES 37'11" W, 176.14 FEET, THENCE N85 DEGREES 51'10" W, 762.29 FEET, THENCE N1 DEGREES 51'46" E, 110.92 FEET, THENCE N55 DEGREES 32'33" E, 230.17 FEET, THENCE N44 DEGREES 13'47" E, 203.96 FEET, THENCE N53 DEGREES 37'44" E, 301.49 FEET, THENCE N89 DEGREES 58'33" E, 161.04 FEET, THENCE S74 DEGREES 08'48" E, 109.64 FEET, THENCE N89 DEGREES 58'22" E, 287.30 FEET, THENCE S0 DEGREES 01'38" E. 495.83 FEET, THENCE S42 DEGREES 30'19" W, 110.50 FEET TO THE POINT OF BEGINNING, CONTAINING 12.20 ACRES.

**PARCEL NUMBER:** 744002400015

BEING THE SAME PROPERTY ACQUIRED BY POTTAWATTAMIE COUNTY BY DEED OF STATE OF IOWA OFFICE OF THE SECRETARY OF STATE - STATE LAND OFFICE, DATED 07/09/1997 AND RECORDED 07/22/1997 IN DOCUMENT NUMBER : 98-3427

**EXHIBIT B**  
**[WRITTEN METES AND BOUNDS OF THE PREMISES**  
**AND INGRESS/EGRESS AND UTILITY EASEMENT]**

**LAND SPACE LEGAL DESCRIPTION**

That part of the East Half of the Southeast Quarter of Section 2, Township 74 North, Range 40 West of the 5th P.M., Pottawattamie County, Iowa, and being more particularly described as follows:

Referring to the Southeast corner of said Section 2, a Concrete monument with #4 rebar found for corner; thence northerly, on a Grid bearing of North 01°41'38" East, on the East line of Section 2, 150.00 feet; thence departing said East line, westerly, North 88°17'14" West, 222.04 feet to the Point of Beginning for the described Land Space; thence following the perimeter of the Land Space on the following bearings and distances: northwesterly, North 28°07'58" West, 28.00 feet; thence northeasterly, North 61°52'02" East, 15.00 feet; thence southeasterly, South 28°07'58" East, 28.00 feet; thence southwesterly, South 61°52'02" West, 15.00 feet, to the Point of Beginning.

Containing a total calculated area of 420 square feet, or 0.010 acres, more or less.

**UTILITY RIGHT OF WAY LEGAL DESCRIPTION**

A Utility Right-of-way, 10 feet in width, located in that part of the East Half of the Southeast Quarter of Section 2, Township 74 North, Range 40 West of the 5th P.M., Pottawattamie County, Iowa, the centerline being more particularly described as follows:

Referring to the Southeast corner of said Section 2, a Concrete monument with #4 rebar found for corner; thence northerly, on a Grid bearing of North 01°41'38" East, on the East line of Section 2, 150.00 feet; thence departing said East line, westerly, North 88°17'14" West, 222.04 feet to the Southwest corner of the described Land Space; thence following the perimeter of the Land Space on the following bearings and distances: northwesterly, North 28°07'58" West, 28.00 feet; thence northeasterly, North 61°52'02" East, 5.74 feet to the Point of Beginning for the centerline of the described Utility Right-of-way; thence following the centerline of the right-of-way on the following bearings and distances: northerly, North 01°17'01" East, 72.42 feet; thence easterly, South 88°42'59" East, 179.13 feet; to a point of intersection on the West right-of-way line of Highway 59, also being the Point of Termination for the centerline of the described Utility Right-of-way.

Containing a total calculated area of 2,515 square feet, or 0.058 acres more or less.

Parallel lines from the described centerline are intended to lengthen or shorten to intersect the lines described.

**EXHIBIT C**

**[BOUNDARY SURVEY OF THE PREMISES  
AND INGRESS/EGRESS AND UTILITY EASEMENT]**

**[SEE ATTACHED]**

SITE NAME: OMA Carson DT  
LOCATION CODE: 458544  
ATTY/DATE: GJ/3.24.21

## TOWER LEASE AGREEMENT

This Tower Lease Agreement ("**Agreement**") made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between **Pottawattamie County**, with its principal offices located at 227 S. 6<sup>th</sup> Street, Council Bluffs, Iowa 51501, hereinafter designated "**LESSOR**" and **Omaha Cellular Telephone Company d/b/a Verizon Wireless**, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated "**LESSEE**". The LESSOR and LESSEE are at times collectively referred to hereinafter as the "**Parties**" or individually as the "**Party**".

### WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. PREMISES. LESSOR hereby leases to the LESSEE a portion of that certain space ("**Tower Space**") on the LESSOR's tower, hereinafter referred to as the "**Tower**", located at 40790 Hwy 92, Carson, Pottawattamie County, Iowa, as shown on the Tax Map of the City of Carson as Parcel Identification No., 744002400015, and legally described in Exhibit "A" attached hereto (the entirety of LESSOR's property is referred to hereinafter as the "**Property**"), together with a 15' x 28' or 420 square foot parcel of land (the "**Land Space**") sufficient for the installation of LESSEE's communications equipment; together with the non-exclusive right ("**Right of Way**") for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, over the Property to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of communications equipment, together with the right to install and maintain utility wires, poles, cables, fiber optic cables, conduits, and pipes over, under, or along a ten foot (10') wide right-of-way ("**Utility Right of Way**") extending from the nearest public right-of-way, over and through the Property between the Land Space and the Tower Space. The Tower Space, Land Space, Right of Way and Utility Right of Way are substantially described in Exhibit "A", attached hereto and made a part hereof demised premises and are collectively referred to hereinafter as the "**Premises**".

In the event any public utility is unable to use the Right of Way or Further Rights of Way, the LESSOR hereby agrees to grant an additional right-of-way(s) either to the LESSEE or to the public utility at no cost to the LESSEE.

LESSOR hereby grants permission to LESSEE to install, maintain and operate the radio communications equipment, antennas and appurtenances described in Exhibit "B" attached hereto.

LESSEE reserves the right to replace the aforementioned equipment with similar and comparable equipment provided said replacement does not increase tower loading of said Tower.

2. SURVEY. LESSOR also hereby grants to LESSEE the right to survey the Property and Premises, and said survey shall then become Exhibit "C" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by the LESSEE.

3. TERM; RENTAL; ELECTRICAL.

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of 9,000.00 to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 25 below. The Agreement shall commence based upon the first day of the month after LESSEE begins installation of LESSEE's communications equipment on the Premises. LESSOR and LESSEE acknowledge and agree that the initial rental payment shall not be delivered by LESSEE until 60 days after the Commencement Date. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of Lessee.

b. For any party to whom rental payments are to be made, LESSOR or any successor in interest of LESSOR hereby agrees to provide to LESSEE (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and local withholding forms if required; and (iii) other documentation to verify LESSOR's or such other party's right to receive rental as is reasonably requested by LESSEE. Rental shall accrue in accordance with this Agreement, but LESSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LESSEE. Upon receipt of the requested documentation, LESSEE shall deliver the accrued rental payments as directed by LESSOR.

c. LESSOR shall, at all times during the Term, provide electrical service and telephone service access within the Premises. If permitted by the local utility company servicing the Premises, LESSEE shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by LESSEE's installation. In the alternative, if permitted by the local utility company servicing the Premises, LESSEE shall furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by LESSEE's installation. In the event such sub-meter is installed, the LESSEE shall pay the utility directly for its power consumption, if billed by the utility, and if not billed by the utility, then the LESSEE shall pay the LESSOR thirty (30) days after receipt of an invoice from LESSOR indicating the

usage amount based upon LESSOR's reading of the sub-meter. All invoices for power consumption shall be sent by LESSOR to LESSEE at Verizon Wireless, M/S 3846, P.O. Box 2375, Spokane, WA 99210-2375. LESSEE shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LESSOR. LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term. The initial term and all extensions shall be collectively referred to herein as the "**Term**".

5. EXTENSION RENTALS. The annual rental shall increase on each anniversary of the Commencement Date by an amount equal to two percent (2%) of rent for the previous lease year.

6. INTENTIONALLY OMITTED.

7. TAXES.

a. LESSOR shall invoice and LESSEE shall pay any applicable transaction tax (including sales, use, gross receipts, or excise tax) imposed on LESSEE and required to be collected by LESSOR based on any service, rental space, or equipment provided by LESSOR to LESSEE. LESSEE shall pay all personal property taxes, fees, assessments, or other taxes and charges imposed by any Government Entity that are imposed on LESSEE and required to be paid by LESSEE that are directly attributable to LESSEE's equipment or LESSEE's use and occupancy of the Premises. Payment shall be made by LESSEE within 60 days after presentation of a receipted bill and/or assessment notice which is the basis for such taxes or charges. LESSOR shall pay all ad valorem, personal property, real estate, sales and use taxes, fees, assessments or other taxes or charges that are attributable to LESSOR's Property or any portion thereof imposed by any Government Entity.

b. LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith

and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

8. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. All improvements, equipment, antennas and conduits shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "**Governmental Approvals**") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests and structural analysis which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests or structural analysis is unsatisfactory; (v) LESSEE determines that the Premises is no longer technically or structurally compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

9. INDEMNIFICATION. Subject to Paragraph 10 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

10. INSURANCE.

- a. Notwithstanding the indemnity in section 10, the Parties hereby waive and release any and all rights of action for negligence against the other which may

hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

- b. LESSEE will maintain at its own cost;
  - i. Commercial General Liability insurance with limits of \$2,000,000 per occurrence for bodily injury (including death) and for damage or destruction to property
  - ii. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a combined single limit of one million (\$1,000,000) each accident for bodily injury and property damage
  - iii. Workers Compensation insurance providing the statutory benefits and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit coverage.

LESSEE will include the LESSOR as an additional insured as their interest may appear under this Agreement on the Commercial General Liability and Auto Liability policies.

- c. LESSOR will maintain at its own cost commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. LESSOR will include the LESSEE as an additional insured as their interest may appear under this Agreement .
- d. In addition, LESSOR shall obtain and keep in force during the Term a policy or policies insuring against loss or damage to the Tower with a commercially reasonable valuation, as the same shall exist from time to time without a coinsurance feature. LESSOR's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and earthquake unless required by a lender or included in the base premium), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Tower required to be demolished or removed by reason of the enforcement of any building,



zoning, safety or land use laws as the result of a covered loss, but not including plate glass insurance.

11. LIMITATION OF LIABILITY. Except for indemnification pursuant to paragraphs 9 and 31, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

12. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR.

13. ACCESS TO TOWER. LESSOR agrees the LESSEE shall have free access to the Tower at all times for the purpose of installing and maintaining the said equipment. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and egress to this site and Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said premises.

14. TOWER COMPLIANCE. LESSOR covenants that it will keep the Tower in good repair as required by all Laws (as defined in Paragraph 35 below). The LESSOR shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers. If the LESSOR fails to make such repairs including maintenance the LESSEE may make the repairs and the costs thereof shall be payable to the LESSEE by the LESSOR on demand together with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. If the LESSOR does not make payment to the LESSEE within ten (10) days after such demand, the LESSEE shall have the right to deduct the costs of the repairs from the succeeding monthly rental amounts normally due from the LESSEE to the LESSOR.

No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances.

All antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

Not later than fifteen (15) days following the execution of this Agreement, LESSOR shall supply to LESSEE copies of all structural analysis reports that have done with respect to the Tower and throughout the Term, LESSOR shall supply to LESSEE copies of all structural analysis reports that are done with respect to the Tower promptly after the completion of the same.

Upon request of the LESSOR, LESSEE agrees to relocate its equipment on a temporary basis to another location on the Property, hereinafter referred to as the “**Temporary Relocation**,” for the purpose of LESSOR performing maintenance, repair or similar work at the Property or on the Tower provided:

- a. The Temporary Relocation is similar to LESSEE’s existing location in size and is fully compatible for LESSEE’s use, in LESSEE’s reasonable determination;
- b. LESSOR pays all costs incurred by LESSEE for relocating LESSEE’s equipment to the Temporary Relocation and improving the Temporary Relocation so that it is fully compatible for the LESSEE’s use, in LESSEE’s reasonable determination;
- c. LESSOR gives LESSEE at least ninety (90) days written notice prior to requiring LESSEE to relocate;
- d. LESSEE’s use at the Premises is not interrupted or diminished during the relocation and LESSEE is allowed, if necessary, in LESSEE’s reasonable determination, to place a temporary installation on the Property during any such relocation; and
- e. Upon the completion of any maintenance, repair or similar work by LESSOR, LESSEE is permitted to return to its original location from the temporary location with all costs for the same being paid by LESSOR.

15. INTERFERENCE.

a. LESSEE agrees that LESSEE will not cause interference that is measurable in accordance with industry standards to LESSOR’s equipment. LESSOR agrees that LESSOR and other occupants of the Property will not cause interference that is measurable in accordance with industry standards to the then existing equipment of LESSEE.

b. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 48 hours following notice to the interfering party via telephone to LESSEE’S Network Operations Center (at (800) 852-2671/(800) 621-2622) or to LESSOR (at \_\_\_\_\_), the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured.

c. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

16. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its communication cabinets, antenna(s), equipment, conduits, fixtures and all personal property and restore the

Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

17. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 16 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Paragraph 16 and this Paragraph 17, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 16 shall be equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

18. RIGHT OF FIRST REFUSAL. If LESSOR elects, during the Term to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

19. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Tower thereon to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of this Agreement.

20. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

21. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

22. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

23. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located.

24. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

25. NOTICES. Except for notices permitted via telephone in accordance with Paragraph 15, all notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender,

addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: Pottawattamie County  
227 S. 6<sup>th</sup> Street  
Council Bluffs, Iowa 51501  
Attention: Sheriff Andy Brown

LESSEE: Omaha Cellular Telephone Company  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

26. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

27. SUBORDINATION AND NON-DISTURBANCE. LESSOR shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "**Mortgage**") by LESSOR which from time to time may encumber all or part of the Property, Tower or right-of-way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Tower or Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "**Non-Disturbance Agreement**"), and shall recognize LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("**Lender's**") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "**Purchaser**") acquires an ownership interest in the Tower or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill LESSOR's obligations under the Agreement, and (3) promptly cure all of the then-existing LESSOR defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Tower or Property and (3) agrees to accept a cure by Lender of any of

LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

28. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

29. DEFAULT.

a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Property; provided, however, that if the nature of LESSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

30. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, LESSOR shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. If LESSEE so performs any of LESSOR's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LESSEE shall immediately be owing by LESSOR to LESSEE, and LESSOR shall pay to LESSEE upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from LESSOR, LESSEE may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to LESSOR until the full undisputed amount, including all accrued interest, is fully reimbursed to LESSEE.

31. ENVIRONMENTAL. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("**EH&S Laws**"). LESSEE shall indemnify and hold harmless LESSOR from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws or to the extent that LESSEE causes a release of any regulated substance to the environment. LESSOR shall indemnify and hold harmless LESSEE from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of LESSEE. The Parties recognize that LESSEE is only leasing a small portion of LESSOR's property and that LESSEE shall not be responsible for any environmental condition or issue except to the extent resulting from LESSEE's specific activities and responsibilities. In the event that LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if LESSEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, LESSOR agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

32. CASUALTY. In the event of damage by fire or other casualty to the Tower or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the

Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

33. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Tower, LESSEE, in LESSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, LESSEE may, at LESSEE's option, to be exercised in writing within fifteen (15) days after LESSOR shall have given LESSEE written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If LESSEE does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, LESSOR shall promptly repair any damage to the Premises caused by such condemning authority.

34. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

35. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions



of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively “**Laws**”). LESSEE shall, in respect to the condition of the Premises and at LESSEE’s sole cost and expense, comply with (a) all Laws relating solely to LESSEE’s specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

36. NON-DISCLOSURE. The Parties agree this Agreement and any information exchanged between the Parties regarding the Agreement are confidential. The Parties agree not to provide copies of this Agreement or any other confidential information to any third party without the prior written consent of the other or as required by law. If a disclosure is required by law, prior to disclosure, the Party shall notify the other Party and cooperate to take lawful steps to resist, narrow, or eliminate the need for that disclosure, subject to the limitations on the lessor under Iowa Law Chapter 22.

37. MOST FAVORED LESSEE. LESSOR represents and warrants that the rent, benefits and terms and conditions granted to LESSEE by LESSOR hereunder are now and shall be, during the Term, no less favorable than the rent, benefits and terms and conditions for substantially the same or similar tenancies or licenses granted by LESSOR to other parties. If at any time during the Term LESSOR shall offer more favorable rent, benefits or terms and conditions for substantially the same or similar tenancies or licenses as those granted hereunder, then LESSOR shall, within 30 days after the effective date of such offering, notify LESSEE of such fact and offer LESSEE the more favorable offering. If LESSEE chooses, the Parties shall then enter into an amendment that shall be effective retroactively to the effective date of the more favorable offering, and shall provide the same rent, benefits or terms and conditions to LESSEE. LESSEE shall have the right to decline to accept the offering. LESSOR’s compliance with this requirement shall be subject, at LESSEE’s option, to independent verification.

38. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

39. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LESSOR:**

**Pottawattamie County**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

\_\_\_\_\_  
WITNESS  
\_\_\_\_\_

**LESSEE:**

**Omaha Cellular Telephone Company d/b/a  
Verizon Wireless**

**By: Cellco Partnership, Its Managing  
General Partner**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

\_\_\_\_\_  
WITNESS  
\_\_\_\_\_

**Exhibit "A"**

(Legal Description of Premises with the Property)

**PROPERTY LEGAL DESCRIPTION**

ALL THAT PARCEL OF LAND IN THE IN THE COUNTY OF POTTAWATTAMIE AND STATE OF IOWA AS MORE FULLY DESCRIBED IN DEED DOCUMENT NUMBER 98-3427 AND PARCEL # 744002400015, BEING KNOWN AND DESIGNATED AS:

A PARCEL OF LAND LOCATED IN THE SE 1/4 SE 1/4 OF SECTION 2, T74N, R40W, OF THE 5TH P.M., POTTAWATTAMIE COUNTY, IOWA, AS SHOWN ON PLAT OF SURVEY EXHIBIT "A", ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF. SAID PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SE CORNER OF SAID SECTION 2, THENCE N 90 DEGREES 00'00"W, 126.14 FEET ALONG THE SOUTH LINE OF SAID SECTION 2, THENCE N0 DEGREES 00'00" W, 49.69 FEET TO THE POINT OF BEGINNING, THENCE N88 DEGREES 52'28" W, 122.17 FEET, THENCE S84 DEGREES 37'11" W, 176.14 FEET, THENCE N85 DEGREES 51'10" W, 762.29 FEET, THENCE N1 DEGREES 51'46" E, 110.92 FEET, THENCE N55 DEGREES 32'33" E, 230.17 FEET, THENCE N44 DEGREES 13'47" E, 203.96 FEET, THENCE N53 DEGREES 37'44" E, 301.49 FEET, THENCE N89 DEGREES 58'33" E, 161.04 FEET, THENCE S74 DEGREES 08'48" E, 109.64 FEET, THENCE N89 DEGREES 58'22" E, 287.30 FEET, THENCE S0 DEGREES 01'38" E. 495.83 FEET, THENCE S42 DEGREES 30'19" W, 110.50 FEET TO THE POINT OF BEGINNING, CONTAINING 12.20 ACRES.

**PARCEL NUMBER:** 744002400015

BEING THE SAME PROPERTY ACQUIRED BY POTTAWATTAMIE COUNTY BY DEED OF STATE OF IOWA OFFICE OF THE SECRETARY OF STATE - STATE LAND OFFICE, DATED 07/09/1997 AND RECORDED 07/22/1997 IN DOCUMENT NUMBER : 98-3427

**LAND SPACE LEGAL DESCRIPTION**

That part of the East Half of the Southeast Quarter of Section 2, Township 74 North, Range 40 West of the 5th P.M., Pottawattamie County, Iowa, and being more particularly described as follows:

Referring to the Southeast corner of said Section 2, a Concrete monument with #4 rebar found for corner; thence northerly, on a Grid bearing of North 01°41'38" East, on the East line of Section 2, 150.00 feet; thence departing said East line, westerly, North 88°17'14" West, 222.04 feet to the Point of Beginning for the described Land Space; thence following the perimeter of the Land Space on the following bearings and distances: northwesterly, North 28°07'58" West, 28.00 feet; thence northeasterly, North 61°52'02" East, 15.00 feet; thence southeasterly, South 28°07'58" East, 28.00 feet; thence southwesterly, South 61°52'02" West, 15.00 feet, to the Point of Beginning.

Containing a total calculated area of 420 square feet, or 0.010 acres, more or less.

## **UTILITY RIGHT OF WAY LEGAL DESCRIPTION**

A Utility Right-of-way, 10 feet in width, located in that part of the East Half of the Southeast Quarter of Section 2, Township 74 North, Range 40 West of the 5th P.M., Pottawattamie County, Iowa, the centerline being more particularly described as follows:

Referring to the Southeast corner of said Section 2, a Concrete monument with #4 rebar found for corner; thence northerly, on a Grid bearing of North 01°41'38" East, on the East line of Section 2, 150.00 feet; thence departing said East line, westerly, North 88°17'14" West, 222.04 feet to the Southwest corner of the described Land Space; thence following the perimeter of the Land Space on the following bearings and distances: northwesterly, North 28°07'58" West, 28.00 feet; thence northeasterly, North 61°52'02" East, 5.74 feet to the Point of Beginning for the centerline of the described Utility Right-of-way; thence following the centerline of the right-of-way on the following bearings and distances: northerly, North 01°17'01" East, 72.42 feet; thence easterly, South 88°42'59" East, 179.13 feet; to a point of intersection on the West right-of-way line of Highway 59, also being the Point of Termination for the centerline of the described Utility Right-of-way.

Containing a total calculated area of 2,515 square feet, or 0.058 acres more or less.

Parallel lines from the described centerline are intended to lengthen or shorten to intersect the lines described.

**Exhibit "B"**

Description of Tower Equipment

(See Attached Site Sketch)

**Exhibit "C"**

Survey

(See Attached)

**Jana Lemrick/Director, HR;  
Cortny Garmong/Lockton**

**Discussion and/or decision to approve:  
Lockton Consulting Agreement.**



# Services Agreement

This Services Agreement (the "Agreement") made and entered into effective as of June 1, 2021 ("Effective Date"), by and between Pottawattamie County ("Client") and the Founders Series of Lockton Companies, LLC ("Lockton"). In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **TERM.** This Agreement will be in effect from the Effective Date to May 31, 2022 unless earlier terminated in accordance with the provisions of the Agreement. This Agreement may be extended by mutual written agreement of the parties pursuant to the provisions of this Agreement.

## 2. COMPENSATION, DISCLOSURE AND PAYMENT TERMS

2.1 **Compensation.** All consulting and/or insurance services provided by Lockton as set forth in Addendum A will be performed for the following compensation:

- Minimum annual fee of \$11,825 for a maximum of 220 participants,
  - \$53.75 for any participants over 220,
  - \$107.50 for any members required to participate in health coaching
- And
- New hires will be billed as outlined in Addendum A

2.2 **Payment Schedule.** Client shall pay the fee set forth above on the following payment schedule:

Billing Group	Due Date	Amount Due
Main Group	Annually	Based on participation
New Hires	Quarterly	Based on participation

Client will provide full payment to Lockton for all fee invoices submitted within 30 days of Client's receipt of each invoice. Client grants Lockton a right to setoff any amounts Lockton owes to Client against any unpaid fees Client owes to Lockton.

2.3 **Fee Due Upon Change in Control.** In the event Client experiences a "Change in Control" (as defined herein); the annual fee will be deemed fully earned and payable by Client as of the effective date of the Change in Control. "Change In Control" shall be defined as any of the following events: 1) the acquisition by an external organization of 50% or more of the then outstanding shares of common stock of Client or the combined voting power of the then outstanding voting securities of Client entitled to vote generally in the election of directors; 2) individuals who constitute the Client's Board cease for any reason to constitute at least a majority of the Board; 3) consummation of a reorganization, merger, consolidation or sale or other disposition of all or substantially all of the assets of the Client unless the beneficial owners of the outstanding Client common stock and voting securities continue to own, directly or indirectly, more than 50% of,

respectively, the then outstanding common stock and voting power of the then outstanding voting securities; or 4) approval by the stockholders of Client of a complete liquidation or dissolution of Client.

## 3. SERVICES

3.1 **Scope of Services.** It is hereby understood and agreed that in consideration of the compensation set forth above, Lockton will provide the consulting services outlined in Addendum A, which is attached to and made part of this Agreement. In the event Client: 1) requests that Lockton provide other services beyond those set forth in Addendum A; or 2) makes an acquisition or otherwise experiences growth such that the level and/or scope of services needed by Client shall significantly exceed the level of services as contemplated at the inception of this Agreement, Client and Lockton agree to review in good faith the additional services required and increase the fee set forth herein or agree to other compensation (such as commissions on additional placements) in addition to the fee. Such additional compensation shall be set forth in a written and signed addendum pursuant to Section 6.3 of this Agreement.

3.2 **Use of Intermediaries.** When in Lockton's professional judgment it is necessary or appropriate, Lockton may utilize the services of intermediaries or other appropriate outside vendors to assist in the servicing and marketing of Client's employee benefit programs. However, this may only be done after consultation with and prior approval by Client. Such intermediaries may or may not be affiliates of Lockton. Lockton will advise Client whether any such intermediary is an affiliate of Lockton. Under all circumstances, any and all compensation earned by any intermediary or outside vendor shall be in addition to the compensation paid to Lockton as described herein.

## 4. TERMINATION OF SERVICES

4.1 **Termination for Convenience.** Client or Lockton may terminate this Agreement at any time with ninety (90) days' written notice to the other party.

### 4.2 Fee Due at Termination.

In the event that Client terminates this Agreement by ninety (90) days written notice, all services will be discontinued on the effective date of termination and Lockton will assist in the transition to Client's new vendor or other person that Client





authorizes and represents to Lockton is authorized by applicable law to render the services transitioned.

## 5. CONFIDENTIALITY

**5.1 Confidential Information.** Lockton and Client acknowledge that the nature of Lockton's services provided to Client may result in either party (the "Disclosing Party") disclosing to the other party (the "Receiving Party") certain of Disclosing Party's information ("Information"), some of which may be of a confidential or proprietary nature. For purposes of this Agreement, Information shall mean any and all nonpublic information provided to the Receiving Party, which may include the Disclosing Party's product, marketing, pricing or financial strategies; customer information; employee information; proprietary business processes or technologies; financial information and/or trade secrets.

**5.2 Exclusions.** Information shall not include any information that: 1) is or becomes publicly known and generally available in the public domain through no wrongful action or disclosure by the Receiving Party; 2) becomes known by the Receiving Party without any obligation to hold such information in confidence; 3) is received from a third party without similar restrictions known to the Receiving Party; 4) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Information; or 5) The Receiving Party is required by law, regulation, summons, subpoena or similar judicial, regulatory or administrative order or proceeding to disclose, but only to the extent and for the purpose of such required disclosure, provided the Receiving Party, unless prohibited by law, gives the Disclosing Party prompt written notice of such required disclosure to enable the Disclosing Party to pursue protective measures.

**5.3 Receiving Party's Confidentiality Duties.** In consideration of the Disclosing Party's disclosure of Information to the Receiving Party, the Receiving Party hereby agrees as follows:

A. The Receiving Party shall take all reasonable steps to protect the confidentiality of the Information and shall not use the Information for any purpose other than the advancement of the services contemplated herein.

B. The Receiving Party shall not, without the prior written approval of the Disclosing Party, publish or disclose to others any of the Information, except that Client expressly authorizes Lockton to disclose Client's Information to underwriters, insurers, insurance-related intermediaries and/or other third parties as necessary for the purpose of providing the services contemplated herein.

C. The Parties acknowledge that any unauthorized disclosure or use of the Information in violation of this Agreement by a Receiving Party may cause the Disclosing Party irreparable harm, and that money damages alone, the amount of which might be difficult to ascertain, might be an inadequate remedy and, therefore, agree that the Disclosing Party shall have the right to seek injunctive relief in addition to any other remedies otherwise available to the Disclosing Party at law or in equity.

D. At the Disclosing Party's written request, the Receiving Party shall return to the Disclosing Party any and all records or documents constituting the Information, except that the Receiving Party shall be permitted to retain an archival copy of the Information pursuant to its record retention and regulatory and legal compliance requirements. If return of the Information is not feasible, the Receiving Party shall maintain the Information pursuant to the terms and conditions of this Agreement.

## 6. GENERAL CONDITIONS

**6.1 Cooperation.** Client shall provide Lockton with reasonable cooperation and assistance necessary for Lockton to fulfill its responsibilities to Client pursuant to the terms of this Agreement, including, without limitations, copies of all documents reasonably requested by Lockton and the cooperation of and access to certain of Client's personnel.

**6.2 Assignment.** Neither party shall assign any rights nor duties herein set forth without the prior written consent of the other party.

**6.3 Entire Agreement.** The terms and conditions of this Agreement constitute the entire Agreement between the parties with respect to the subject matter hereof. Subject to the provisions of Section III.B., this Agreement shall not be amended except by a written amendment signed by both parties, and no promises, agreement, or representations not herein set forth shall be of any force or effect between them. This Agreement shall serve to terminate and supersede all agreements and undertakings heretofore entered into between the parties on subjects covered by this Agreement.

**6.4 Indemnification.** Lockton and Client shall indemnify, defend, and hold one another, their directors, officers, employees, agents, and representatives harmless from and against any and all claims, damages, losses, or expenses (including such parties' reasonable attorney, accountant, and expert witness fees and costs) incurred by one party as the result of (i) a material breach by the other party of any of its obligations under this Agreement or (ii) any willful or negligent conduct of the other party.

**6.5 Dispute Resolution.** Any and all disputes between the parties arising out of or relating to this Agreement or the services provided pursuant to this Agreement shall be adjudicated and resolved exclusively through binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in effect at the time such arbitration is initiated. Any arbitration hereunder shall be conducted in Kansas City, Missouri, and the decision of the arbitrator shall be final and binding upon all parties. An arbitrator's decision may be recorded and registered as a judgment in any jurisdiction in which the party against whom the arbitration award is rendered has assets in order for the prevailing party to collect any amounts due hereunder. Each party shall be responsible to pay its own arbitration filing fees, arbitrator fees, attorney fees, and other related administrative costs and expenses incurred in the course of prosecuting or defending a claim in arbitration.

**6.6 Limitation of Liability.** IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES

(INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS), ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHER LEGAL THEORY. IN ANY EVENT, THE LIABILITY OF ONE PARTY TO THE OTHER FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO TEN MILLION DOLLARS (\$10,000,000.00). THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION SHALL NOT APPLY TO: 1) ANY DAMAGES AWARDED IN CONJUNCTION WITH A FINAL JUDICIAL DETERMINATION OF FRAUD OR GROSS NEGLIGENCE; OR 2) PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENT, WILFUL OR INTENTIONAL ACTS OF A PARTY OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS. REFERENCES TO A PARTY IN THIS SECTION 6.6 INCLUDE SUCH PARTY'S DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, AGENTS AND DOMESTIC AND INTERNATIONAL AFFILIATED ENTITIES.

**6.7 Accuracy and Completeness of Information.** Client shall be solely responsible for the accuracy and completeness of all information furnished to Lockton and/or to underwriters, insurers, insurance-related intermediaries and/or other third parties as necessary for the services contemplated herein. Lockton shall not be responsible to independently verify the accuracy or completeness of any information that Client provides, and Lockton shall be entitled to rely on such information. Lockton shall have no liability for any errors, deficiencies or omissions in any services provided to Client, including the placement of insurance on Client's behalf, that are based on inaccurate or incomplete information provided to Lockton. Client understands that the failure to provide all necessary information to an insurer, whether intentional or by error, could result in the denial of claims or rescission of coverage altogether. Client will review all policy documents provided to Client by Lockton and shall inform Lockton of any inaccuracies, deficiencies or discrepancies contained therein.

**6.8 Use of a Particular Insurer.** Lockton is not bound to utilize any particular insurer and is not authorized to make binding commitments on behalf of any insurer, except under certain circumstances which Lockton shall endeavor to make known to Client. Lockton shall not be responsible for the solvency of any insurer or its ability or willingness to pay claims, return premiums or other financial obligations. Lockton does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to Client. Lockton will not take any action to replace Client's insurers unless Client instructs Lockton to do so.

**6.9 No Reliance.** Any reports or advice provided by Lockton should not be relied upon as accounting, legal or tax advice. In all instances, Lockton recommends that Client seek independent advice on such matters from professional accounting, legal and tax advisors.

**6.10 Responsibility for Insurance Programs.** Lockton will not be responsible for the adequacy or effectiveness of any insurance programs or policies implemented or placed by another broker,

including without limitation any acts or omissions occurring prior or subsequent to Lockton's engagement.

**6.11 Relationship between the Parties.** The Client acknowledges and agrees that in no event shall Lockton owe any enhanced or special duties to the Client, express or implied, in fact or by law, whether referred to as a special relationship or fiduciary relationship or otherwise, except to the extent required by applicable law.

**6.12 Notices.** Any communication or notice required or which may be given hereunder shall be addressed to Client and to Lockton at their respective addresses as follows:

**CLIENT**  
POTTAWATTAMIE COUNTY  
227 South 6<sup>th</sup> St  
Council Bluffs, IA 51503  
Attn: Jana Lemrick  
Title: Director of Human Resources

**LOCKTON**  
FOUNDERS SERIES OF LOCKTON COMPANIES, LLC  
444 W. 47th Street Suite 900  
Kansas City, MO 64112  
Attn: Timothy Meacham  
Title: Chief Operating Officer

**6.13 Governing Law.** This Agreement shall be governed for all purposes by the laws of the state of Missouri.

*<The rest of this page is intentionally left blank. Signature page to follow.>*



In witness whereof, the parties hereto have executed the Agreement in duplicate intending each copy to serve as an original as of the day and year first written above.

FOUNDERS SERIES OF LOCKTON COMPANIES, LLC

POTTAWATTAMIE COUNTY

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Timothy Meacham  
Chief Operating Officer

Scott A. Belt  
Boards of Supervisors, Chairman

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Standard Services	Typical Frequency	Cost
<b>Clinical Nurse Advocate Program</b>		
<b>Health Risk Assessment (HRA)</b> – Administer the delivery of an online survey of individual medical history and lifestyle choices behaviors.	Annually	\$11,825.00/year which includes a maximum of 220 participants. Additional participants are \$53.75 PPPY
<b>Collection of Physician Preventive Biometric Screening and Laboratory Results Form</b> – The collection / measurement of height, weight, waist circumference, blood pressure, as well as laboratory screening. This includes integration with onsite screening vendors to receive biometric and laboratory data.	Annually	Included in Fee
<b>Wellness Portal access</b> – All members can register on the Wellness Portal and have access to their individualized reporting, incentive criteria and other health resources that may be available.	Annually	Included in Fee
<b>Health Coaching</b> – Four (4) one -to-one meetings with a professional nurse to educate, set health goals and to offer motivation and support to the individuals for reaching their health goals.	Quarterly	\$107.50 PPPY
<b>New Hire participant Health Risk Assessment (HRA)</b> - Administer the delivery of an online survey of individual medical history and lifestyle choices behaviors.	Once	\$53.75 PPPY
<b>Collection of New Hire Physician Preventive Biometric Screening and Laboratory Results Form</b> – The collection / measurement of height, weight, waist circumference, blood pressure, as well as laboratory screening.	Once	Included in Fee
<b>New Hire Wellness Portal access</b> – All members can register on the Wellness Portal and have access to their individualized reporting, incentive criteria and other health resources that may be available.	Once	Included in Fee
<b>New Hire Health Coaching</b> – Any remaining one -to-one meetings with a professional nurse to educate, set health goals and to offer motivation and support to the individuals for reaching their health goals.	Quarterly	\$40/participant/coaching session
<b>Employer Aggregate Report</b> – A comprehensive aggregate report of the Client’s biometric and lifestyle results stratified by risk category, and executive review of findings.	Annually	Included in Fee
<b>Educational Presentations</b> – Presentations developed and presented by a nurse.	As needed	Additional fees may apply
<b>Incentive Tracking and Reporting</b> – A report will be provided with the names of participants and their incentive qualification status.	Annually	Included in Fee
<b>Lunch – N – Learns</b> – Presentation developed and presented by a nurse.	As needed	2 are included; there will be a cost for additional presentations
<b>Wellness Newsletter</b>	Monthly	Electronic version Included

## **Our Mission**

To be the worldwide value and service leader in insurance brokerage, risk management, employee benefits, and retirement services

## **Our Goal**

To be the best place to do business and to work



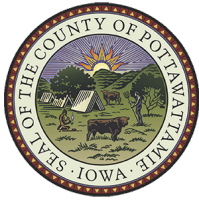
**LOCKTON**

RISK MANAGEMENT | EMPLOYEE BENEFITS | RETIREMENT SERVICES

[www.lockton.com](http://www.lockton.com)

**Matt Wyant/Planning Director, Iowa West  
Foundation, Advance Southwest Iowa, Green  
Hills RC&D**

**Discussion and/or decision on funding request  
for American Rescue Plan Planning for  
Pottawattamie County and Communities.**



## RURAL POTTAWATTAMIE COUNTY INFRASTRUCTURE COLLABORATIVE

### Mission:

A county-wide collaborative that will identify current and future infrastructure projects in rural Pottawattamie County. The collaborative will provide guidance and resources to those communities that desire to complete the vetted infrastructure projects by utilizing American Recovery Plan and/or other State and Federal grant programs.

### Scope of Work – Phase I – Identification:

<u>Timeframe:</u>	<u>Task:</u>	<u>Responsible:</u>
Complete by 5/14/2021	Schedule Meetings: Mayors/City Clerks & City Councils	GHRCD
Complete by 5/31/2021	Assessment of Known Projects and Comp/CIP Plans Creation of Shared Tracking Document	GHRCD/ASWIC
Complete by 5/31/2021	Create Town-Specific Tracking System for: Project Ideas, Budgets and Feasibility	GHRCD
Complete by 5/31/2021	Create Collaborative Fact Sheet to Include: ARPA and Mission of Collaborative	GHRCD
June 2021	Presentation to County Board of Supervisors	GHRCD/ASWIC
June 2021	Presentation to CITIES	GHRCD/ASWIC
Complete by 7/1/2021	Schedule Community Visioning Meetings	GHRCD
Complete by 8/1/2021	Create and Launch Community-Wide Survey	GHRCD
Complete by 8/31/2021	Conduct Community Visioning Meetings	GHRCD
Complete by 9/30/2021	Present Final Findings and Report to Collaborative Partners	GHRCD/ASWIC

\*Note: The above noted timeframes and scheduling of community meetings will be dictated by the availability of City staff and Council meeting schedules.

### Scope of Work – Phase II – Implementation:

<u>Timeframe:</u>	<u>Task:</u>	<u>Responsible:</u>
Complete by 6/11/2021	Draft RFP/RFQ – Seeking Infrastructure/Incentive Consultant	ASWIC
Complete by 6/25/2021	Final RFP/RFQ Launched	ASWIC
Complete by 7/16/2021	Interviews and Selection of Consultant	Partners
Complete by 8/31/2021	Optimization Project Discussions with Consultant	ASWIC
Complete by 8/31/2021	Creation of Shared Project Tracking/Timeline System	ASWIC
Complete by 10/31/2021	Schedule Project Planning Meetings-Consultant/Communities	ASWIC
On-Going	Applications, Approvals, Meetings, Tracking, etc.	ASWIC

### Collaborative Communication:

Golden Hills and Advance have already established a monthly meeting to discuss the on-going progress of the collaborative. We recommend establishing a similar structure for the full collaborative. In addition, Golden Hills and Advance will ensure that updates are provided to elected officials on an on-going basis.

**Projected Costs:**

**Golden Hills: 560/HRS@\$60/HR = \$33,600**

**Mileage = \$560**

**Copies/Supplies = \$250**

**ASWIC: Phase II – Implementation Hours/Costs TBD**

**\*Golden Hills and Advance will track hours and expenses related to the collaborative.**



**Matt Wyant/Planning and Development  
Director**

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



## SERVICE AGREEMENT FOR POTTAWATTAMIE COUNTY

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Read and Agreed to by:

---

Representative Signature – FIELD DAY DEVELOPMENT

---

Printed Name of Representative

Date

---

Representative Signature – POTTAWATTAMIE COUNTY

---

Printed Name of Representative

Date

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

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

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

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

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

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

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

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

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

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

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

The Owner and Contractor agree as follows.

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

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

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

## TABLE OF ARTICLES

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

### EXHIBIT A INSURANCE AND BONDS

#### ARTICLE 1 THE CONTRACT DOCUMENTS

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

#### ARTICLE 2 THE WORK OF THIS CONTRACT

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

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

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

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

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

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

#### § 3.3 Substantial Completion

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

Init.



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

By the following date:

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

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

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

#### ARTICLE 4 CONTRACT SUM

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

#### § 4.2 Alternates

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

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

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

Item	Price	Conditions for Acceptance
N/A		

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

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

#### § 4.4 Unit prices, if any:

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

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

#### § 4.5 Liquidated damages, if any:

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

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

Init.

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User Notes:

(2034530091)

**§ 4.6 Other:**

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

N/A

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

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

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

N/A

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

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

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

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

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

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

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

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

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

**§ 5.1.7 Retainage**

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

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

| 5% (Five Percent)

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

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

| N/A

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

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

| N/A

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

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

| N/A

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

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

**§ 5.2 Final Payment**

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

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

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

| N/A

**§ 5.3 Interest**

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

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

| 0 % (Zero Percent)

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

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

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

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

### § 6.2 Binding Dispute Resolution

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

*(Check the appropriate box.)*

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

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

## ARTICLE 7 TERMINATION OR SUSPENSION

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

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

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

N/A

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

## ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner’s representative:

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

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

Init.

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

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

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

**§ 8.5 Insurance and Bonds**

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

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

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

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

N/A

§ 8.7 Other provisions:

N/A

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 This Agreement is comprised of the following documents:

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

*(Paragraphs deleted)*

Drawings

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

.5 Specifications

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

Init.

**.6** Addenda, if any:

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

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

**.7** Other Exhibits:

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

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

[ **N/A** ] The Sustainability Plan:

<b>Title</b>	<b>Date</b>	<b>Pages</b>
--------------	-------------	--------------

[ **X** ] Supplementary and other Conditions of the Contract:

<b>Document</b>	<b>Title</b>	<b>Date</b>	<b>Pages</b>
Supplementary Conditions of the Contract for Construction	Supplementary Conditions of the Contract for Construction	March 2021	Inclusive

**.8** Other documents, if any, listed below:

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

Bid Tabulation Dated April 20, 2021

Meco-Henne Proposal Dated April 20, 2021

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

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

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

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

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

# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

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

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

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

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

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

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



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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

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

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

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

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

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

### § 1.3 Capitalization

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

### § 1.4 Interpretation

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

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

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

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

### § 1.6 Notice

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

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

### § 1.7 Digital Data Use and Transmission

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

### § 1.8 Building Information Models Use and Reliance

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



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

## ARTICLE 2 OWNER

### § 2.1 General

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

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

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

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

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

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

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

### § 3.3 Supervision and Construction Procedures

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

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

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

### § 3.4 Labor and Materials

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

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

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

### § 3.5 Warranty

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

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

### § 3.6 Taxes

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

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

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

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

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

### § 3.7.4 Concealed or Unknown Conditions

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

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

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 Superintendent

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

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

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

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

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

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

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

### § 3.11 Documents and Samples at the Site

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### § 3.13 Use of Site

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

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

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

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

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

## § 3.18 Indemnification

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

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

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

### § 4.2 Administration of the Contract

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

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

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

### § 4.2.4 Communications

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



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

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

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

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

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

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

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

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

### § 5.3 Subcontractual Relations

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

### § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

### § 6.2 Mutual Responsibility

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

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

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

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

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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

## § 8.2 Progress and Completion

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

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

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

## § 8.3 Delays and Extensions of Time

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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

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

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

#### § 9.4 Certificates for Payment

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

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

#### § 9.5 Decisions to Withhold Certification

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

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

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

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

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

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

#### § 9.6 Progress Payments

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

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

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

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

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

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

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

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



## § 9.7 Failure of Payment

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

## § 9.8 Substantial Completion

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

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

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

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

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

## § 9.9 Partial Occupancy or Use

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

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

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

## § 9.10 Final Completion and Final Payment

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

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

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

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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

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

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

#### § 10.3 Hazardous Materials and Substances

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

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

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

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

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

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

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

#### § 10.4 Emergencies

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

### ARTICLE 11 INSURANCE AND BONDS

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

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

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

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

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

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

## § 11.2 Owner's Insurance

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

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

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

## § 11.3 Waivers of Subrogation

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

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

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

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

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

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

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

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 Uncovering of Work

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

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

#### § 12.2 Correction of Work

##### § 12.2.1 Before Substantial Completion

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

##### § 12.2.2 After Substantial Completion

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

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

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

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

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

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

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

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

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

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

### § 13.5 Interest

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

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

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

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

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



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

## § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

## § 14.3 Suspension by the Owner for Convenience

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

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

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

## § 14.4 Termination by the Owner for Convenience

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

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

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims

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

#### § 15.1.3 Notice of Claims

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

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

#### § 15.1.4 Continuing Contract Performance

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

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

#### § 15.1.5 Claims for Additional Cost

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

#### § 15.1.6 Claims for Additional Time

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

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

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

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

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

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

## § 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

### § 15.3 Mediation

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

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

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

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

### § 15.4 Arbitration

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

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

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

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

### § 15.4.4 Consolidation or Joinder

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

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

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

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







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DIVISION 23 – HEATING VENTILATING AND AIR CONDITIONING (HVAC)

23 00 50	General Mechanical Provisions	23 00 50-1 to 7
23 05 01	Closeout Submittals for HVAC	23 05 01-1 to 4
23 05 02	Demonstration and Training for HVAC Systems	23 05 02-1 to 3
23 05 13	Common Motor Requirements for HVAC Equipment	23 05 13-1 to 2
23 05 14	Variable Frequency Controllers	23 05 14-1 to 3
23 05 19	Meters and Gauges for HVAC Piping	23 05 19-1 to 2
23 05 23	General-Duty Valves for HVAC Piping	23 05 23-1 to 8

DIVISION 23 – HEATING VENTILATING AND AIR CONDITIONING (HVAC) (Continued)

23 05 33	Heat Tracing for HVAC Piping	23 05 33-1 to 3
23 05 48	Vibration and Seismic Controls for HVAC	23 05 48-1 to 3
23 05 53	Identification for HVAC Piping and Equipment	23 05 53-1 to 3
23 05 93	Testing, Adjusting, And Balancing for HVAC	23 05 93-1 to 7
23 07 13	Duct Insulation	23 07 13-1 to 3
23 07 16	HVAC Equipment Insulation	23 07 16-1 to 6
23 07 19	HVAC Piping Insulation	23 07 19-1 to 5
23 09 23	Direct-Digital Control System for HVAC	23 09 23-1 to 12
23 21 13	Hydronic Piping	23 21 13-1 to 9
23 21 14	Hydronic Specialties	23 21 14-1 to 4
23 21 23	Hydronic Pumps	23 21 23-1 to 3
23 23 00	Refrigerant Piping	23 23 00-1 to 5
23 25 00	HVAC Water Treatment	23 25 00-1 to 3
23 31 00	HVAC Ducts and Casings	23 31 00-1 to 3
23 33 00	Air Duct Accessories	23 33 00-1 to 5
23 34 16	Centrifugal HVAC Fans	23 34 16-1 to 3
23 35 13	Dust Collection Systems	23 35 13-1 to 4
23 36 00	Air Terminal Units	23 36 00-1 to 3
23 37 00	Air Outlets and Inlets	23 37 00-1 to 2
23 52 16	Condensing Boilers	23 52 16-1 to 4
23 57 00	Heat Exchangers for HVAC	23 57 00-1 to 2
23 64 23	Scroll Water Chillers	23 64 23-1 to 6
23 73 13	Modular Central-Station Air-Handling Units	23 73 13-1 to 8
23 82 00	Convection Heating/Cooling Units	23 82 00-1 to 3

DIVISION 26 – ELECTRICAL

26 01 01	Common Electrical Work	26 01 01-1 to 7
26 05 19	Conductors and Cables	26 05 19-1 to 10
26 05 26	Grounding and Bonding	26 05 26-1 to 7
26 05 29	Hangers and Supports	26 05 29-1 to 5
26 05 33	Conduit	26 05 33-1 to 9
26 05 35	Boxes 26 05 35-1 to 6	
26 05 36	Cable Trays	26 05 36-1 to 6
26 05 53	Identification	26 05 53-1 to 7
26 05 83	Wiring Connections	26 05 83-1 to 2
26 09 23	Lighting Control Devices	26 09 23-1 to 10
26 22 00	Low-Voltage Transformers	26 22 00-1 to 5
26 24 16	Panelboards	26 24 16-1 to 8
26 27 26	Wiring Devices	26 27 26-1 to 8
26 28 13	Fuses 26 28 13-1 to 3	
26 28 17	Enclosed Switches	26 28 17-1 to 4
26 29 13	Enclosed Controllers	26 29 13-1 to 5
26 41 13	Lightning Protection for Structures	26 41 13-1 to 3
26 43 00	Surge Protective Devices	26 43 00-1 to 4
26 51 00	Interior Lighting	26 51 00-1 to 8
26 56 00	Exterior Lighting	26 56 00-1 to 6

DIVISION 27 – COMMUNICATIONS

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

DIVISION 28 – ELECTRONIC SAFETY AND SECURITY

28 10 00      Access Control      28 10 00-1 to 7

28 20 00      Video Surveillance      28 20 00-1 to 6

28 46 00      Fire Detection and Alarm      28 46 00-1 to 8

DIVISION 31 – EARTHWORK

31 10 00      Site Clearing      31 10 00-1 to 2

31 20 00      Earthwork      31 20 00-1 to 6

31 63 16      Auger Cast Grout Piles      31 63 16-1 to 8

DIVISION 32 – EXTERIOR IMPROVEMENTS

32 12 16      Hot-Mix Asphalt Paving      32 12 16-1 to 7

32 13 13      Concrete Pavement      32 13 13-1 to 10

32 92 00      Turf and Grasses      32 92 00-1 to 5

32 93 00      Plants      32 93 00-1 to 8

DIVISION 33 – UTILITIES

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

1 SUPPLEMENTARY CONDITIONS  
2 OF THE CONTRACT FOR CONSTRUCTION  
3

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

8 ARTICLE 2; OWNER

9 2.22 - Add the following clarification:

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

13 ARTICLE 3; CONTRACTOR

14 3.2.2 - Add the following:

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

19 3.6 - Add the following clarification:

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

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

29 ARTICLE 5: SUBCONTRACTORS

30 5.2.1 - Add the following :

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

35 ARTICLE 7: CHANGES IN THE WORK

36 7.3.3 - Add the following:

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

1 Following is a summary of Construction Change Directive Markups:

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

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

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

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

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

37  
38 ARTICLE 9; PAYMENTS AND COMPLETION

39 9.3.1 - Add the following:

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

1 9.3.1.3 - Add the following:  
2

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

6 9.10.2 - Add the following:  
7

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

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

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

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

15 ARTICLE 11: INSURANCE AND BONDS

16 11.1.1 - Add the following:  
17

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

22 11.1.2.5 - Add the following:  
23

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

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

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

38 11.1.4 - Add the following:  
39

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

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

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

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

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

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

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



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

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

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

21           22

23           11.3.1 - Add the following:

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

26           27           11.3.3 – Add the following:

28           29           The Owner will provide Builders Risk Insurance

30

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

32

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

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

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

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

18  
19           ARTICLE 13; MISCELLANEOUS PROVISIONS

20           13.5.1 - Add the following:

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

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

**TABULATION OF BIDS**

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

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

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

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

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

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

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

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

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REVISED BID PROPOSAL (ADDENDUM #3)

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

PROJECT: Pottawattamie County Courthouse Building Addition

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

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

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

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

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

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

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

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

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

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

7  
8 ALLOWANCES

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

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

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

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

17  
18 TOTAL LUMP SUM BASE BID:

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

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

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

26  
27 UNIT PRICES

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

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

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

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

37  
38 ALTERNATES

39 Refer to Section 01 23 00 – ALTERNATES, for expanded description of Alternates.  
40

41 Alternate No. 1

42 Delete Snow Melt System.

43  
44 Deduct 69,000 Dollars

45  
46 (\$ Six nine thousand)

1 Alternate No. 2

2 Delete Lightning Protection

3  
4 Deduct 15,000 Dollars

5  
6 (\$ fifteen thousand )

7  
8  
9 VOLUNTARY SUBSTITUTIONS

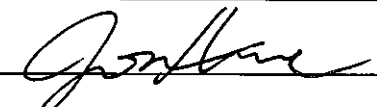
<u>Products</u>	<u>Manufacturer</u>	<u>Adjustment In Bid</u>
_____	_____	add / deduct \$ _____
_____	_____	add / deduct \$ _____
_____	_____	add / deduct \$ _____

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

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

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

29  
30 TELEPHONE: 402-339-8127

31  
32 BY:   
33  
34 Jon Henne Jr.  
35 (Printed name)  
36  
37 Vice President  
38 (Title)

**BID BOND**

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

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

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

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

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

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

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

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

Signed and sealed this 20th day of April, 2021

Maggie Moran  
Witness

Al J. Viny  
Witness

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

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

# UNIVERSAL SURETY COMPANY

Lincoln, Nebraska

## POWER OF ATTORNEY

### KNOW ALL MEN BY THESE PRESENTS:

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

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

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

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

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

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

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

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

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

*Carol J. Clark*

Secretary/Treasurer

By

UNIVERSAL SURETY COMPANY

*Curt L. Hartter*

President



State of Nebraska

County of

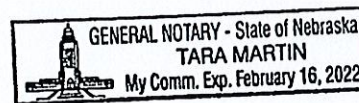
of

ss.  
Lancaster

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

*Tara Martin*

Notary Public



My Commission Expires February 16, 2022.

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

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

*Philip C. Abel*

Director





**Jason Slack/Director, Buildings and Grounds;  
John Jorgensen/HGM**

**Discussion and/or decision to approve:  
HGM's proposal for Courthouse Parking Feasibility  
Study.**



May 5, 2021

**Mr. Jason Slack, Building and Grounds Director**  
**Pottawattamie County**  
227 S. 6<sup>th</sup> Street  
Council Bluffs, Iowa 51501

**Subject: Pottawattamie Courthouse Parking Feasibility Study - UPDATED**  
Council Bluffs, Iowa  
HGM Proposal No. 000721-082

Dear Jason:

On behalf of HGM ASSOCIATES INC. (HGM) we are pleased to submit this letter form agreement for engineering services for the referenced project. This agreement consists of this letter, the attached Scope of Services labeled as Exhibit A and the attached General Provisions labeled as Exhibit B.

HGM will provide Basic Services including Architectural, Civil, and Structural Engineering services. These services are more specifically defined in the attached Scope of Services, Exhibit A. We will also provide Additional Services upon your request and receipt of your written authorization.

HGM will provide these basic services on an hourly basis with a not to exceed ceiling of \$9,200. Additional Services will be charged on an hourly basis in accordance with our standard hourly rate schedule.

We will bill you monthly for our services and reimbursable expenses proportionate to the work completed on the project. All fees are due and payable to HGM within 30 days of the invoice date. A service charge of one and one-half percent per month will be added to any amounts outstanding after 30 days.

We anticipate that we will be able to begin work on this project within 3 days of receiving your authorization to proceed in the form of your acceptance of this agreement. We estimate that the contract documents can be completed within 30 days of your authorization to proceed. If at any time we are delayed in the performance of these services, we will notify you immediately.

**Mr. Jason Slack, Building and Grounds Director**  
**Pottawattamie County**  
May 5, 2021

Please indicate your acceptance of this agreement by signing where indicated below and returning one original signed copy to this office OR you may then scan a complete set of this document and email or fax it in its entirety to HGM.

We sincerely appreciate the opportunity to continue working with you.

Sincerely,  
HGM ASSOCIATES INC. - CONSULTANT



John E. Jorgensen, P.E.  
Project Manager



Terrence L. Smith, P.E.  
President

Acceptance of Proposal:

POTTAWATTAMIE COUNTY - CLIENT

---

Authorized Signature

---

Printed Name & Title

---

Date of Acceptance

## SCOPE OF SERVICES

## EXHIBIT A

This is an exhibit attached to and made part of the letter agreement dated May 5, 2021, between: POTTAWATTAMIE COUNTY (CLIENT) and HGM ASSOCIATES INC. (CONSULTANT).

Project Description: Pottawattamie Courthouse Parking Feasibility Study - UPDATED

The Basic Services to be provided by the CONSULTANT under this agreement are further described as follows:

1. PARKING LOT RECONSTRUCTION – CONCEPTUAL LAYOUT (\$2,200)
  - A. Develop conceptual layout to reconstruct and improve existing metered parking lot directly east of the Courthouse. Layout will include maximizing the number of parking stalls.
  - B. Develop a Budgetary Opinion of Probable Construction Costs (OPC) including reconstruction with concrete, storm sewer improvements, new lighting, and a payment gate system.
  
2. TWO-STORY PARKING STRUCTURE – CONCEPTUAL LAYOUT (\$3,500)
  - A. Develop conceptual layout for a two-story parking structure at the same location. Layout will include maximizing the number of parking stalls per level and potentially the addition of additional levels in the future.
  - B. Develop Budgetary OPC for both a precast system and a post-tensioned system. Layout will include vehicle ramps, stairs/elevator core, storm drainage, lighting and security.
  
3. TWO-STORY PARKING STRUCTURE – SERVICES BUILDING SITE (3,500)
  - A. Develop conceptual layout for a two-story parking structure on the Services Building Site, southwest cornering of Pearl Street and 6<sup>th</sup> Avenue. Layout will include maximizing the number of parking stalls per level and potentially the addition of additional levels in the future.
  - B. Develop Budgetary OPC for both a precast system and a post-tensioned system. Layout will include vehicle ramps, stairs/elevator core, storm drainage, lighting and security.

## GENERAL PROVISION

## EXHIBIT B

This is an exhibit attached to and made part of the letter agreement dated May 5, 2021, between: POTTAWATTAMIE COUNTY (CLIENT) and HGM ASSOCIATES INC. (CONSULTANT). The General Provisions agreed to by CONSULTANT and CLIENT are as follows:

**Ownership of Instruments of Service:** All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by the CONSULTANT as instruments of service shall remain the property of the CONSULTANT. The CONSULTANT shall retain these records for a period of ten (10) years, during which period they will be made available to the CLIENT at all reasonable times. CONSULTANT will provide CLIENT with a paper copy of the plans, the specifications, and laboratory test reports for information and reference in connection with the project; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others. Any such reuse will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT or CONSULTANT'S subconsultants.

**CADD/Electronic Files:** In accepting, and utilizing any drawings, reports and data on any form of electronic media generated by the CONSULTANT, the CLIENT agrees that all such electronic files are instruments of service. The CLIENT agrees to waive all claims against the CONSULTANT resulting in any way from any unauthorized changes to, or reuse of, the electronic files for any projects by anyone other than the CONSULTANT. In the event of a conflict between printed hard copy documents signed and sealed by the CONSULTANT and electronic files, the hard copy documents shall govern.

**Termination or Suspension:** If the CLIENT fails to make payments to the CONSULTANT in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTANT'S option, cause for suspension of performance of services under this Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT'S services. The CONSULTANT'S fees for the remaining services and the time schedules shall be equitably adjusted.

If the CLIENT suspends the Project, the CONSULTANT shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the CONSULTANT shall be compensated for expenses incurred in the interruption and resumption of the CONSULTANT'S services. The CONSULTANT'S fees for the remaining services and the time schedules shall be equitably adjusted.

Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

In the event of termination not the fault of the CONSULTANT, the CONSULTANT shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses indicated in the next paragraph.

Termination Expenses are in addition to compensation for the CONSULTANT'S services and include expenses directly attributable to termination for which the CONSULTANT is not otherwise compensated.

The CLIENT'S rights to use the CONSULTANT'S Instruments of Service in the event of a termination of this Agreement are set forth in the Ownership of Instruments of Service clause above. If the CLIENT requests copies of the CONSULTANT'S Instruments of Service, the cost of the preparation of those copies shall be considered as a Termination Expense.

**Plan Revisions:** If, after any plans or specifications are completed on any portion thereof, and are approved by the CLIENT and other necessary agencies, the CONSULTANT is required to change plans and specifications because of changes made, authorized, or ordered by the CLIENT, then the CONSULTANT shall receive additional compensation for such changes. Fees for these changes will be computed on an hourly basis.

**Information Furnished by CLIENT:** CLIENT shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data and other information furnished by CLIENT to CONSULTANT pursuant to this Agreement. CONSULTANT may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

**Information Furnished by Utility Companies:** The utility locations shown on the CONSULTANT'S instruments of service are from locates or drawings provided to the CONSULTANT by the utility companies. The CONSULTANT makes no guarantee that the utilities shown on the CONSULTANT'S instruments of service comprise all such utilities in the area, either in service or abandoned. The CONSULTANT further does not warrant that the utilities shown on the instruments of service are in the exact location indicated.

**Successors and Assigns:** Both parties agree that, upon execution of this agreement, same shall be binding upon their/its successors, assigns, and legal representatives until terminated by the expiration of agreement or termination by written notice, as provided above.

**Limitation of Liability:** The CLIENT agrees that to the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT, CONSULTANT'S officers, directors, partners, employees, agents, and subconsultants, to CLIENT, and anyone claiming by, through, or under CLIENT for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to this Project or Agreement from any cause or causes, including but not limited to torts, negligence, professional errors or omissions, strict liability, breach of contract, or breach of warranty, shall not exceed the total compensation received by CONSULTANT or \$100,000 whichever is greater.

## GENERAL PROVISIONS

## EXHIBIT B

**Waiver of Consequential Damages:** Notwithstanding anything in this Agreement to the Contrary, it is agreed that CONSULTANT shall not be liable in any event for any special or consequential damages suffered by the CLIENT arising out of the services hereunder. Special or consequential damages as used herein shall include, but not limited to, loss of capital, loss of product, loss of use of any system, or other property, or any other indirect, special or consequential damage, whether arising in contract, tort (including negligence), warranty or strict liability.

**Opinion of Probable Construction Cost:** Opinions of probable construction costs and detailed cost estimates prepared by the CONSULTANT represent his/her best judgment as a design professional familiar with the construction industry. It is recognized, however, that the CONSULTANT has no control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices or over competitive bidding or market conditions. Accordingly, the CONSULTANT makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from the CONSULTANT's opinion of probable construction cost.

**Construction Phase Services:** (If included under the scope of this Agreement) The CONSULTANT shall provide administration of the Contract between the CLIENT and the Contractor as set forth below and in General Conditions of the Contract for Construction. The CONSULTANT's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the CONSULTANT issues the Statement of Final Completion.

The CONSULTANT shall advise and consult with the CLIENT during the Construction Phase Services. The CONSULTANT shall have authority to act on behalf of the CLIENT only to the extent provided in this Agreement or the General Conditions of the Contract for Construction. The CONSULTANT shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the CONSULTANT be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

The CONSULTANT shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in substantial compliance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the CONSULTANT shall keep the CLIENT reasonably informed about the progress and quality of the portion of the Work completed, and report to the CLIENT (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

**Jobsite Safety:** That the General Contractor shall be solely responsible for jobsite safety, and that this intent shall be carried out in the CLIENT'S contract with the General Contractor, and that such contract shall indemnify the CONSULTANT. The CONSULTANT, and his agents, shall be named as an additional insured on the General Contractor's policies of general liability insurance.

**Construction Staking:** That the Fees the CONSULTANT receives for the task of construction staking are not commensurate with the potential risk. CLIENT, therefore, agrees to check or require General Contractor to check the location of all construction stakes placed by the CONSULTANT. CLIENT further agrees to limit liability of CONSULTANT for construction staking services such that the total liability of the CONSULTANT shall not exceed the CONSULTANT'S compensation received for the particular service, or \$5,000.00, whichever is greater.

**Hazardous Materials:** The CLIENT agrees that the CONSULTANT's scope of services does not include any services related to the presence of any asbestos, fungi, bacteria, mold or hazardous or toxic materials. Should it become known to the CONSULTANT that such materials may be present on or adjacent to the jobsite, the CONSULTANT may, without liability for any damages, suspend performance under this agreement, until CLIENT takes appropriate action to remove or abate said materials. The CLIENT further agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, partners, employees and subconsultants (collectively, CONSULTANT) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos, fungi, bacteria, mold, hazardous or toxic substances, or products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the CONSULTANT.

**Mediation:** Any claims or disputes under this agreement shall be submitted to non-binding mediation.

**Discussion and/or decision regarding  
Resolution No. 96-2020.**

**RESOLUTION NO. 96-2020**

WHEREAS, in response to the Novel Coronavirus 2019 (COVI D-19) outbreak, Iowa Governor Kim Reynolds issued a Proclamation of Disaster Emergency, the United States Department of Health and Human Services declared a national public health emergency, and President Trump issued a proclamation declaring that the COVID-19 outbreak in the United States constitutes a national emergency; and

WHEREAS, COVID-19 can spread from person-to-person and poses a possibility of causing severe illness or death; and

WHEREAS, the risk of transmission of COVID-19 may be substantially reduced by community containment strategies, measures, and protocols designed to slow the community spread of COVID-19; and

WHEREAS, Pottawattamie County Division of Public Health, the Centers for Disease Control and Prevention, and other public health experts encourage the use of a mask or other face covering for protection in public settings to mitigate the risk of community spread, especially when social distancing measures are difficult to maintain; and

WHEREAS, the Pottawattamie County Board of Supervisors implemented COVID-19 Face Covering Policy regarding the use of face coverings by Pottawattamie County employees in Pottawattamie County-owned facilities and vehicles to protect public health, and


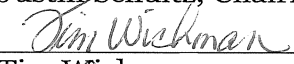

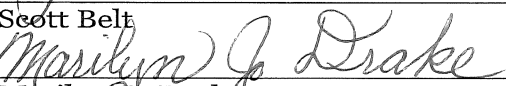
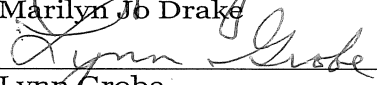
WHEREAS, the Pottawattamie County Board of Supervisors finds that additional measures to protect public health and the life, health, safety, and property of people entering Pottawattamie County-owned facilities are in the public interest.

NOW THEREFORE BE IT RESOLVED the Pottawattamie County Board of Supervisors approves and adopts the Pottawattamie County-Owned Facilities Face Covering Policy as follows:

All persons entering any County owned facility shall wear a face covering. If a person needing to complete business with the County is unable to wear a face covering, he or she should contact the Department with which they need to complete business and make alternate arrangements. NOTE: many County services are able to be completed online.

The policy is effective on November 5, 2020, and remains in effect until repealed or superseded.

**Dated this 5<sup>th</sup> day of November, 2020.**

	ROLL CALL VOTE			
	AYE	NAY	ABSTAIN	ABSENT
 Justin Schultz, Chairman	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
 Tim Wichman	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
 Scott Belt	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
 Marilyn Jo Drake	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
 Lynn Grobe	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ATTEST:  7/0  
Melvyn Houser, County Auditor



**Other Business**

**Discussion and/or decision to approve and authorize  
Board to sign Resolution No. 34-2021 entitled:  
RESOLUTION FIXING DATE FOR A MEETING ON THE  
PROPOSAL TO REALLOCATE CERTAIN UNSPENT  
PROCEEDS OF THE GENERAL OBLIGATION CAPITAL  
LOAN NOTES, SERIES 2020A, OF POTTAWATTAMIE  
COUNTY, IOWA, AND PROVIDING FOR PUBLICATION OF  
NOTICE THEREOF**

## **RESOLUTION NO. 34-2021**

### **RESOLUTION FIXING DATE FOR A MEETING ON THE PROPOSAL TO REALLOCATE CERTAIN UNSPENT PROCEEDS OF THE GENERAL OBLIGATION CAPITAL LOAN NOTES, SERIES 2020A, OF POTTAWATTAMIE COUNTY, IOWA, AND PROVIDING FOR PUBLICATION OF NOTICE THEREOF**

**WHEREAS**, the Board of Supervisors of Pottawattamie County, Iowa has previously issued its General Obligation Capital Loan Notes, Series 2020A, in the aggregate principal amount of \$4,610,000 (the "Series 2020A Notes"), for costs of:

- a) equipping, remodeling, or reconstruction of public buildings including equipping the Courthouse with a fiber network;
- b) equipping, remodeling, or reconstruction of public buildings including software and card readers for doors on multiple public buildings;
- c) equipping of public buildings including software for the County Attorney's office;
- d) peace officer communication equipment and other emergency services communication equipment and systems including a vehicle for emergency response situations;
- e) a vehicle for the use of risk management which is necessary for the operation of the county;
- f) sheriff vehicles which are necessary for the operation of the county or the health and welfare of its citizens;
- g) acquisition and development of land for a public park or other recreation or conservation purpose including a maintenance building and shower facility at Botna Bend Park;
- h) acquisition and development of land for a public park or other recreation or conservation purpose, including a new dock and asphalt parking at Narrows Park;
- i) acquisition and development of land for a public park or other recreation or conservation purpose, including RV hook-ups and hard surface roads at Old Towne Park;
- j) acquisition and development of land for a public park or other recreation or conservation purpose, including a shower facility at Arrowhead Park;
- k) acquisition and development of land for a public park or other recreation or conservation purpose, including entrance renovation, a 3 lane entry and additional parking at Hitchcock Park;
- l) acquisition and development of land for a public park or other recreation or conservation purpose, including road resurfacing at County Parks;
- m) equipping, remodeling, or reconstruction of public buildings including equipping jail with programmable logic control upgrades;
- n) equipping, remodeling, or reconstruction of public buildings including equipping the Courthouse with access control and video surveillance and the jail with camera upgrades; and

**WHEREAS**, certain proceeds of the Series 2020A Notes remain unspent, and County staff has recommended that not to exceed \$100,000 of such unspent proceeds originally related to the Series 2020A Notes (hereinafter referred to as the "Unspent Proceeds") be applied for the acquisition and equipping of a sheriff vehicle and trailer which are necessary for the operation of the county or the health and welfare of its citizens; and

**WHEREAS**, there being no procedure specified under Iowa law for consideration or approval of such a reallocation, it is hereby determined, pursuant to Section 331.301(5) of the

Code of Iowa, that the procedure set forth in Section 331.442 should apply and that a hearing be held upon the proposal to reallocate the Unspent Proceeds to provide funds for paying costs of the acquisition and equipping of a sheriff vehicle and trailer which are necessary for the operation of the county or the health and welfare of its citizens.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF POTTAWATTAMIE COUNTY, STATE OF IOWA:**

**Section 1.** That this Board meet in the Board Room, County Courthouse, 227 South 6th Street, Council Bluffs, Iowa, at 10:00 A.M., on the 1st day of June, 2021, for the purpose of taking action on the matter of the proposed reallocation of certain Unspent Proceeds of the Series 2020A Notes to provide funds for paying costs of the acquisition and equipping of a sheriff vehicle and trailer which are necessary for the operation of the county or the health and welfare of its citizens.

**Section 2.** That the Auditor is hereby directed to cause one publication to be made of notice of said meeting, in a legal newspaper, printed wholly in the English language, published at least once weekly, and having general circulation in said City, said publication to be not less than ten nor more than twenty clear days before the date of said public meeting.

**Section 3.** The notice of the proposed action shall be in substantially the following form:

(To be published between May 12, 2021 and May 22, 2021, inclusive)

NOTICE OF MEETING OF THE BOARD OF SUPERVISORS OF POTTAWATTAMIE COUNTY, STATE OF IOWA, ON THE MATTER OF THE PROPOSED REALLOCATION OF CERTAIN UNSPENT PROCEEDS OF THE GENERAL OBLIGATION CAPITAL LOAN NOTES, SERIES 2020A, OF POTTAWATTAMIE COUNTY, IOWA, AND THE PUBLIC HEARING THEREON

PUBLIC NOTICE is hereby given that the Board of Supervisors of Pottawattamie County, State of Iowa, will hold a public hearing on the 1st day of June, 2021, at 10:00 A.M., in the Board Room, County Courthouse, 227 South 6th Street, Council Bluffs, Iowa, at which meeting the Board proposes to take additional action for the reallocation of Unspent Proceeds of the General Obligation Capital Loan Notes, Series 2020A (the "Series 2020A Notes") of Pottawattamie County, Iowa, in the aggregate amount of not to exceed \$100,000, in order to provide funds to pay costs of the acquisition and equipping of a sheriff vehicle and trailer which are necessary for the operation of the county or the health and welfare of its citizens.

At any time before the date of the meeting, a petition, asking that the reallocation be submitted to the legal voters of the County, may be filed with the Auditor of the County in the manner provided by Section 331.306 of the Code of Iowa, pursuant to the provisions of Sections 331.402 and 331.442 of the Code of Iowa.

Any person interested may appear at the public hearing, either orally or in writing, and be heard as to the reallocation of said proceeds of the Series 2020A Notes for the above purposes.

This notice is given by order of the Board of Supervisors of Pottawattamie County, State of Iowa, as provided by Sections 331.301(5) and 331.442 of the Code of Iowa, as amended.

Dated this 11th day of May, 2021.

---

County Auditor, Pottawattamie County, State of Iowa

(End of Notice)

**Dated this 11<sup>th</sup> day of May, 2021.**

**ROLL CALL VOTE**

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

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

**Discussion and/or decision to approve and authorize  
Board to sign Resolution No. 35-2021 entitled:  
RESOLUTION FIXING DATE FOR A MEETING ON THE  
PROPOSAL TO REALLOCATE CERTAIN UNSPENT  
PROCEEDS OF THE GENERAL OBLIGATION CAPITAL  
LOAN NOTES, SERIES 2020A, OF POTTAWATTAMIE  
COUNTY, IOWA, AND PROVIDING FOR PUBLICATION OF  
NOTICE THEREOF**

## RESOLUTION NO. 35-2021

### RESOLUTION FIXING DATE FOR A MEETING ON THE PROPOSAL TO REALLOCATE CERTAIN UNSPENT PROCEEDS OF THE GENERAL OBLIGATION CAPITAL LOAN NOTES, SERIES 2020A, OF POTTAWATTAMIE COUNTY, IOWA, AND PROVIDING FOR PUBLICATION OF NOTICE THEREOF

WHEREAS, the Board of Supervisors of Pottawattamie County, Iowa has previously issued its General Obligation Capital Loan Notes, Series 2020A, in the aggregate principal amount of \$4,610,000 (the "Series 2020A Notes"), for costs of:

- a) equipping, remodeling, or reconstruction of public buildings including equipping the Courthouse with a fiber network;
- b) equipping, remodeling, or reconstruction of public buildings including software and card readers for doors on multiple public buildings;
- c) equipping of public buildings including software for the County Attorney's office;
- d) peace officer communication equipment and other emergency services communication equipment and systems including a vehicle for emergency response situations;
- e) a vehicle for the use of risk management which is necessary for the operation of the county;
- f) sheriff vehicles which are necessary for the operation of the county or the health and welfare of its citizens;
- g) acquisition and development of land for a public park or other recreation or conservation purpose including a maintenance building and shower facility at Botna Bend Park;
- h) acquisition and development of land for a public park or other recreation or conservation purpose, including a new dock and asphalt parking at Narrows Park;
- i) acquisition and development of land for a public park or other recreation or conservation purpose, including RV hook-ups and hard surface roads at Old Towne Park;
- j) acquisition and development of land for a public park or other recreation or conservation purpose, including a shower facility at Arrowhead Park;
- k) acquisition and development of land for a public park or other recreation or conservation purpose, including entrance renovation, a 3 lane entry and additional parking at Hitchcock Park;
- l) acquisition and development of land for a public park or other recreation or conservation purpose, including road resurfacing at County Parks;
- m) equipping, remodeling, or reconstruction of public buildings including equipping jail with programmable logic control upgrades;
- n) equipping, remodeling, or reconstruction of public buildings including equipping the Courthouse with access control and video surveillance and the jail with camera upgrades; and

WHEREAS, certain proceeds of the Series 2020A Notes remain unspent, and County staff has recommended that not to exceed \$300,000 of such unspent proceeds originally related to the Series 2020A Notes (hereinafter referred to as the "Unspent Proceeds") be applied for the acquisition and equipping of a critical incident multipurpose vehicle for use in emergencies, natural disasters and other purposes which are necessary for the operation of the county or the health and welfare of its citizens; and

**WHEREAS**, there being no procedure specified under Iowa law for consideration or approval of such a reallocation, it is hereby determined, pursuant to Section 331.301(5) of the Code of Iowa, that the procedure set forth in Section 331.442 should apply and that a hearing be held upon the proposal to reallocate the Unspent Proceeds to provide funds for paying costs of the acquisition and equipping of a critical incident multipurpose vehicle for use in emergencies, natural disasters and other purposes which are necessary for the operation of the county or the health and welfare of its citizens.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF POTTAWATTAMIE COUNTY, STATE OF IOWA:**

**Section 1.** That this Board meet in the Board Room, County Courthouse, 227 South 6th Street, Council Bluffs, Iowa, at 10:00 A.M., on the 1st day of June, 2021, for the purpose of taking action on the matter of the proposed reallocation of certain Unspent Proceeds of the Series 2020A Notes to provide funds for paying costs of the acquisition and equipping of a critical incident multipurpose vehicle for use in emergencies, natural disasters and other purposes which are necessary for the operation of the county or the health and welfare of its citizens.

**Section 2.** That the Auditor is hereby directed to cause one publication to be made of notice of said meeting, in a legal newspaper, printed wholly in the English language, published at least once weekly, and having general circulation in said City, said publication to be not less than ten nor more than twenty clear days before the date of said public meeting.

**Section 3.** The notice of the proposed action shall be in substantially the following form:

(To be published between May 12, 2021 and May 22, 2021, inclusive)

NOTICE OF MEETING OF THE BOARD OF SUPERVISORS OF POTTAWATTAMIE COUNTY, STATE OF IOWA, ON THE MATTER OF THE PROPOSED REALLOCATION OF CERTAIN UNSPENT PROCEEDS OF THE GENERAL OBLIGATION CAPITAL LOAN NOTES, SERIES 2020A, OF POTTAWATTAMIE COUNTY, IOWA, AND THE PUBLIC HEARING THEREON

PUBLIC NOTICE is hereby given that the Board of Supervisors of Pottawattamie County, State of Iowa, will hold a public hearing on the 1st day of June, 2021, at 10:00 A.M., in the Board Room, County Courthouse, 227 South 6th Street, Council Bluffs, Iowa, at which meeting the Board proposes to take additional action for the reallocation of Unspent Proceeds of the General Obligation Capital Loan Notes, Series 2020A (the "Series 2020A Notes") of Pottawattamie County, Iowa, in the aggregate amount of not to exceed \$300,000, in order to provide funds to pay costs of the acquisition and equipping of a critical incident multipurpose vehicle for use in emergencies, natural disasters and other purposes which are necessary for the operation of the county or the health and welfare of its citizens.

At any time before the date of the meeting, a petition, asking that the reallocation be submitted to the legal voters of the County, may be filed with the Auditor of the County in the manner provided by Section 331.306 of the Code of Iowa, pursuant to the provisions of Sections 331.402 and 331.442 of the Code of Iowa.

Any person interested may appear at the public hearing, either orally or in writing, and be heard as to the reallocation of said proceeds of the Series 2020A Notes for the above purposes.

This notice is given by order of the Board of Supervisors of Pottawattamie County, State of Iowa, as provided by Sections 331.301(5) and 331.442 of the Code of Iowa, as amended.

Dated this 11th day of May, 2021.

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County Auditor, Pottawattamie County, State of Iowa

(End of Notice)



**Dated this 11<sup>th</sup> day of May, 2021.**

**ROLL CALL VOTE**

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

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

**Jana Lemrick/Director, HR;**

**Discussion and/or decision regarding Elected  
Officials/ Department Head Retreat.**

**Jana Lemrick/Director, HR; Mark  
Shoemaker/Director, Conservation; Jeff Franco/  
Operations Supervisor, Conservation**

**Discussion and/or decision to approve job  
description for Volunteer and Facilities  
Coordinator**

# Pottawattamie County, Iowa

## Class Description

**Title:** Volunteer and Facilities Coordinator

**FLSA Status:** Non-Exempt

**Department:** Conservation

**Pay Grade:** 514

**Division:** N/A

**Updated:** 3/2/2021

**Full-Time/Part-Time:** Part-Time

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### General Definition of Work

Responsible for the management and maintenance of the Pottawattamie Conservation volunteer program and the management and oversight of the rental facilities, welcome desk, and gift shop at the Loess Hills Lodge at Hitchcock Nature Center. Work should be performed under but with limited supervision of the Conservation Director and Operations Supervisor.

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### Essential Functions

*To perform this job successfully, an individual must be able to perform each essential function satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable an individual with disabilities to perform the essential functions.*

#### Volunteer Coordination

Recruit, interview, match, train, schedule, supervise, and retain volunteer staff for Pottawattamie Conservation with a focus on the needs of the Loess Hills Lodge at Hitchcock Nature Center.

Develop and implement effective volunteer recruitment strategies.

Coordinate and schedule volunteer coverage for available shifts at the Loess Hills Lodge Welcome Desk and provide occasional assistance with volunteer scheduling at the various Pottawattamie Conservation parks and with the Natural Areas Management and Environmental Education programs.

Work with staff to assign and implement volunteer-led assistance projects.

Maintain documentation of volunteers' activities and hours and prepare monthly reports for review by Operations Supervisor, Executive Director, and County Conservation Board.

Ensure Welcome Desk is stocked with all needed materials to support scheduled volunteers and staff

Develop and maintain continuing education training programs for volunteers as appropriate for their particular roles within Pottawattamie Conservation.

Develop and maintain volunteer recognition and rewards program and volunteer appreciation events

In coordination with the Operations Supervisor, develop, track, and prioritize the volunteer program budget.

Maintain consistent and constructive contact with volunteers to encourage volunteer engagement

Assist with staffing visitor welcome desk at Hitchcock Nature Center to serve as ambassador of mission by greeting visitors, answering phones, monitoring materials (e.g. brochure rack stocked, equipment check out, such as snowshoes, GPS units).

Perform other duties as assigned or as situations dictate.

#### Facilities Coordination

Promote and oversee all aspects of Loess Hills Lodge room rentals to include room showings, rental inquiries, receipt of payment and room deposits, ensuring preparedness of rental rooms, and coordinating room availability with Hitchcock Nature Center staff.

# Pottawattamie County, Iowa

## Class Description

Update shared Outlook calendar with all rental and room reservation requests.

Manage and maintain the Loess Hills Lodge gift shop, Welcome Desk, and gallery including staff scheduling, inventory management and ordering, and basic accounting procedures for balancing credit card sales and money drawer.

In cooperation with the Promotions and Communications Coordinator, update and maintain the webpages dedicated to Loess Hills Lodge rental rooms and volunteer support on the Pottawattamie Conservation website.

Support Administrative Assistant with the processing of park memberships and the balancing of credit card sales for Pottawattamie Conservation.

Work with Operations Supervisor and Executive Director to design, implement, and update policies and procedures for public behavior in Pottawattamie Conservation buildings and campuses (e.g. policies and expectations related to minimizing the spread of COVID-19 inside and around the Loess Hills Lodge).

In coordination with the Operations Supervisor, develop, track, and prioritize the gift shop inventory and budget.

With the assistance from the Operations Supervisor, identify and implement necessary procedural and operational updates for the Loess Hills Lodge rental procedures, Welcome Desk, exhibit gallery, and gift shop.

Assist with completing daily tasks for Loess Hills Lodge Welcome Desk checklist when volunteers and staff are not staffing the welcome desk, including spot cleaning of exhibits and entry area, brochure restocking, oversight of gallery exhibits when in use by the public, and regularly monitoring restrooms.

Update and maintain seasonal displays in the Loess Hills Lodge.

Coordinate with environmental education staff on the development and implementation of educational and informational displays in the Loess Hills Lodge.

Perform other duties as assigned or as situations dictate.

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### Minimum Qualifications

Two- or four-year degree in Marketing, Communications, Public Relations, Human Resources, Hospitality, Administration or related field preferred; however, candidates possessing high school diploma and an equivalent combination of experience and training that has provided the required knowledge, skills and abilities will be strongly considered.

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### Special Qualifications

Obtain State of Iowa CPR and First Aid Certification within 6 months of hire.

Valid driver's license.

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### Job Specifications

Flexibility required as position requires working with staff and volunteer schedules, and the general public within variable work environments and settings. High level of professionalism and courteousness when dealing with staff, members of the public, and volunteers. Strong ability to understand and convey the mission and goals of Pottawattamie Conservation. Works well in both independent and team settings. Must possess excellent oral and written communication skills. High attention to detail is critical for this position. Prior experience managing teams is a plus. Prior experience in a retail setting will be favored. Knowledge of the outdoors and natural environments of western Iowa is a plus. Knowledge of and experience with website maintenance is a plus. Ability to communicate tactfully and courteously with others as well as ability to communicate effectively to groups and individuals in both formal and informal

# Pottawattamie County, Iowa

## Class Description

situations. Must be proficient in Microsoft Office suite. Ability to utilize accounting/bookkeeping principles and procedures in order to reconcile documents and balance expenditure accounts as well as handle cash. Desktop publishing experience is preferred (PC-based Adobe Photoshop, MS Publisher and/or Illustrator desirable). Familiarity with established and novel forms of social media and related technology. Must be able and willing to effectively balance the demands of multiple overlapping projects. The nature of this position will require a flexible schedule based on the weekly volunteer schedule. This includes working some weekends and occasional evenings. Ability to get to and from job site in all types of weather conditions. Ability to accurately prepare and maintain basic departmental records and reports. Ability to convey enthusiasm about the volunteer program. Develop strategies to convert visitors to members and to minimize attrition. Ability to establish and maintain effective working relationships with supervisors, fellow employees, various organizations and the general public. Ability to post numerical data accurately. Ability to perform job duties with thoroughness, accuracy and attention to detail

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### Working Conditions

The physical demands and work environment characteristics described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Attendance at work is an essential function of this position. Work is generally performed at Hitchcock Nature Center; however incumbent may have to assist with outdoor programs, which may require considerable hiking over uneven ground. An incumbent must also have the ability to transport themselves to and from various locations throughout the county parks and surrounding jurisdictions.

Duties also require the ability to tolerate an indoor and outdoor work environment that includes contact with dirt, dust and sun exposure. An incumbent must have the ability to frequently lift, push, pull and/or carry equipment, supplies and other materials weighing up to 10 lbs., and to occasionally lift, push, pull and/or carry equipment, supplies and other materials weighing up to 25 lbs. An incumbent must also possess the hand-eye coordination and manual dexterity necessary to use hands and arms to reach, finger, handle, grasp, and feel, and operate the following: vehicles, computers, and any other pieces of equipment that are used to perform the essential functions of the job.

Work hours may occasionally be required before or after business hours including some weekends. Vision abilities, correctable to normal ranges, include close vision, distance vision, peripheral vision, depth perception and the ability to adjust focus. Communication abilities include the ability to talk and hear within normal ranges.

Work requires interaction with the general public and may be stressful when dealing with time constraints.

**Received/Filed**

# Fee Book (04/01/2021 - 04/30/2021)

Criteria: US01\_RPT\_POTT.TndrDate} >= #04/01/2021# AND (FMXFUS01\_RPT\_POTT.TndrDate) <= #04/30/2021#

	<u>Count</u>	<u>Total Fund Amount</u>
<b>Recording Fees</b>		
RMA	1513	\$1,518.00
E-Commerce	1513	\$1,518.00
Audit	356	\$1,920.00
Recording	1513	\$36,335.00
County Transfer Tax	199	\$10,735.93
State Transfer Tax	199	\$51,502.47
Photo Copies	26	\$293.00
<b>Total For Recording Fees</b>	<b>5319</b>	<b>\$103,822.40</b>
<b>Other Fees</b>		
COUNTY PASSPORT POSTAGE FUND	44	\$6,912.70
<b>Total For Other Fees</b>	<b>44</b>	<b>\$6,912.70</b>
<b>Boats</b>		
Boat Writing	22	\$286.25
Boat State	22	\$3,909.40
Boat Title County	22	\$260.00
Boat Title State	22	\$338.00
Boat Liens State	8	\$71.50
Use Tax	22	\$35,582.58
Boat Lien County	8	\$55.00
Road Pass	17	\$1,700.00
DNR Postage	14	\$45.00
<b>Total For Boats</b>	<b>157</b>	<b>\$42,247.73</b>
<b>ELSI</b>		
ELSI Couny	40	\$541.25
ELSI State	21	\$2,446.00
<b>Total For ELSI</b>	<b>61</b>	<b>\$2,987.25</b>
<b>Vitals</b>		
Cert Copy County	63	\$2,912.00
Cert Copy State	63	\$8,008.00
Marriage County	49	\$196.00
Marriage State	49	\$1,519.00
<b>Total For Vitals</b>	<b>224</b>	<b>\$12,635.00</b>
Collected Total:		\$168,605.08
Charged Total:		\$63.00
<b>Grand Total:</b>		<b>\$168,668.08</b>



# Recorder

MR #	40531	Apr-21		5203	\$63,450.13
Amount	Account #	Account Name			
\$3,108.00	0001-1-07-8110-413000-000	Vital Records			
\$1,518.00	0024-1-07-8110-400001-000	RMA			
\$541.25	0001-1-07-8110-409000-000	ELSI			
\$10,735.93	0001-1-07-8110-404000-000	Transfer Tax			
\$36,628.00	0001-1-07-8110-400000-000	Office Fees			
\$1,920.00	0001-1-07-8110-410000-000	Auditor Fees			
\$286.25	0001-1-07-8110-402000-000	Boat Writing Fee			
\$55.00	0001-1-07-8110-402000-000	Boat Liens			
\$6,912.70	0001-1-07-8110-414000-000	Passports			
\$45.00	0001-1-07-8110-415000-000	DNR Boat Postage			
\$1,700.00	0001-1-07-8110-407000-000	ATV ROADPASS			
<b>\$63,450.13</b>	<b>Total</b>		<b>Checks prepared by: M.H.</b>	<b>Signed by: M.A.B.</b>	

*Lynn Herrington, Deputy*

**Closed Session**