

# GENERAL CONTRACT CONDITIONS

## DIVISION I DEFINITIONS

The following terms as used in the contract documents shall have the following meanings:

1.1 CHANGE ORDER – A change order is a written order to the Contractor signed by the City and/or the Project Manager, ordering a change that has been found necessary or desirable to the work form that originally shown by the plans and specifications. Change orders duly executed by the Contractor constitute authorized modifications of the contract

1.2 CITY – The City of Davenport, Iowa.

1.3. CITY COUNCIL – The duly elected members of the City Council of the City of Davenport, Iowa.

1.4 THE CONTRACT – The documents that make up the Contract are set forth in the instrument identified as the “Form of Contract” of which these General Conditions are a part.

1.5 CONTRACT COMPLETION DATE – The contract completion date is the date on which the contractor no longer has any contract time left to complete the work.

1.6 CONTRACT PRICE – CONTRACT SUM – The Contract Price is the unit price(s) stated in the Form of Contract. The Contract Sum is the total amount payable by the City to the Contractor for the performance of the work under the Contract Documents after applying actual measurements of materials to unit prices and adding or deducting all approved Change Orders.

1.7 CONTRACTOR – The person, firm or corporation to whom the within contract is awarded by the City.

1.8 CONTRACT TIME – The total number of working days to complete construction of the work as specified in the Form of Contract.

1.9 DAYS – The term days as used in the contract shall mean calendar days unless the context clearly indicates working days.

1.10 EXTRA WORK – Extra work shall mean work not provided for in the Contract, as awarded, but deemed essential to the satisfactory completion of the contract within its intended scope and authorized by the Project Manager or is desired by the City in addition to that work called for in the Drawings and Specifications. Extra work shall not include additional materials, equipment and labor used due to natural variations in surface or subsurface conditions, except as specifically provided for elsewhere in the Contract Documents.

1.11 INSPECTOR - A person or firm employed by the City to see that the requirements of the specifications are fulfilled and make reports thereon.

1.12 NOTICE – Where in any of the Contract Documents there is any provision in respect to the giving of any notice, such notice shall be deemed to have been given (as to the City), when written notice shall be delivered to the Project Manager, or on the third delivery day after the Notice shall have been placed in the United States mails addressed to the said Project Manager at his office; as to the Contractor, when a written notice shall be delivered to the chief representative of the Contractor at the site of the project to be constructed under the contract or on the third delivery day after mailing such written notice in the United States mails addressed to the Contractor at the place stated in the papers prepared by him to accompany his proposal as the address of his permanent place of business; as to the surety on the performance bond on the third day after the written notice shall have been placed in the United States mails addressed to the surety at the home office of such surety.

1.13 PROJECT MANAGER – The Project Manager means the person designated in the Special Conditions who shall be the City’s representative during the period of time work is performed under this Contract. The Project Manager shall have only those powers and duties contained in the Contract.

1.14 SUBCONTRACTOR – A person, firm or corporation other than the Contractor, supplying labor and materials or labor for work at the site of the Project.

1.15 WORK – The furnishing of all labor, material, equipment and other incidentals necessary or convenient to the successful completion of the contract and the carrying out of all the duties and obligations imposed by the contract.

1.16 WORKING DAY – (A) Any day on which weather or other conditions (not under control of the Contractor) will permit construction operations to proceed for not less than 6 hours in the performance of a controlling item of work. If such conditions permit operations to proceed for at least 4 hours but less than 6 hours, ½ of a working day will be counted. The days counted will normally exclude Saturdays, Sundays, and recognized legal holidays if the Contractor does not work, but will include Saturdays, Sundays and recognized legal holidays if the Contractor does work on a controlling item of work. Nonproductive work that does not require inspection may be done on Saturdays, Sundays and recognized legal holidays with no time charge. Working days will not be charged for the day before or after a holiday when the Contract Documents specifically prohibit work and the Contractor does not work. Working days will not be counted during periods of suspension of work ordered by the Project Manager except when the suspension is a result of a violation of terms of the Contract. Working days start on the date construction is scheduled to start. (B) A controlling item of work is any work item that must be completed prior to commencing work on a subsequent item of work. Equipment maintenance is an example of non-controlling or non-productive item of work.

## **DIVISION 2 CONTRACT DOCUMENTS**

2.1 – THE CONTRACT – The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. Except as provided by Paragraph 12.5, the Contract may be amended or modified only by a written Change Order signed by the Project Manager and/or the City and the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between the City and any Subcontractor or Sub-subcontractor.

2.2 – CORRELATION AND INTENT – The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefore as being necessary to produce the intended results. Words and abbreviations that have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

2.3 – SUCCESSORS AND ASSIGNMENT – The City and the Contractor each binds himself, his partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. No assignment by the Contractor of any principal construction contract or any part thereof or of the funds to be received there under by the Contractor, will be recognized unless such assignment has had the written approval of the City and the Surety has been given due notice of such assignment and has furnished written consent thereto. In addition to the usual recitals in assignment contracts, the following language must be set forth: “It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of all persons, firms or corporations rendering such services or supplying such materials.”

2.4 – “OR EQUAL” CLAUSE – Whenever in any of the Contract Documents any article, appliance, device or material is designated by the name of the manufacturer or vendor or by any proprietary name and such name is not followed by the words “or equal” do follow such designation, unless the context clearly requires a contrary construction. Any article or material equaling the standards fixed may be used in place of that specifically mentioned by the Specifications, providing that the material proposed is first submitted to and approved by the Project Manager. In the event of a dispute over the quality of an offered substitute, the decision of the Project Manager shall be final and binding. The City shall be bound to accept any substitute approved in writing by the Project Manager prior to receipt of bids.

2.5 – GOVERNING LAW – This contract shall be governed by any applicable federal laws and by the laws of the State of Iowa and the ordinances of the City of Davenport, Iowa.

2.6 – RIGHTS AND REMEDIES – The duties and obligations imposed by the Contract and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**DIVISION 3  
THE CITY**

3.1 - SURVEYS – Unless otherwise specified, the necessary fieldwork such as surveying, staking, cuts and fills, will be done by the City. The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

3.2 - ACCESS PROVIDED – The City will provide all right of way, permanent and temporary easements for construction as shown on the plans. Any additional easements required by the contractor shall be acquired by him at his expense. Any areas outside of the right of way and easements owned by the City, as shown on the plans, which are damaged or occupied by the Contractor, shall be paid for at the Contractor's expense.

3.3 - INFORMATION – Information or services under the City's control shall be furnished by the City upon request of the Contractor with reasonable promptness to avoid delay in the orderly progress of the work. The City shall not be responsible for the accuracy of information given to the Contractor, which was provided to the City by persons not under its control or direction.

3.4 COPIES PROVIDED – Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications, reasonably necessary for the execution of the Work.

3.5 COORDINATION OF CONTRACT DOCUMENTS (A) In case of any discrepancy between the drawing and the figures written thereon, the figures, unless obviously incorrect, are to govern. In case of any discrepancy between the project drawings and specifications and standard drawings and specifications, the project drawings are to govern. In case of a discrepancy between the drawings and specifications, the drawings are to govern. In case of a discrepancy between the standard specifications and special provisions or between the drawings and the special provisions, the special provisions shall govern. (B) The Contractor shall not take advantage of any apparent error or omission in the plans or specifications or of any discrepancy between the plans or specifications. The Project Manager shall be permitted to make such corrections in interpretation as may be deemed necessary for the fulfillment of the intent of the plans and specifications.

3.6 INSTRUCTIONS – The City shall forward all instructions to the Contractor through the Project Manager.

3.7 CITY'S RIGHT TO STOP THE WORK – If the Contractor fails to correct defective work as required by Paragraph 13.3 or persistently fails to carry out the Work in accordance with the contract Documents, the Project Manager or the City by a written order signed by an agent specifically so empowered by the City in writing, may order the contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the Work shall not give rise to any duty on the part of the city to exercise this right for the benefit of the Contractor or entity, except to the extent required by Paragraph 6.2.

3.8 CITY'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 seven days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, he may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for any additional services made necessary by such default, neglect or failure. Failure by the Contractor to execute such a Change Order shall not invalidate the order and the Project Manager shall note such refusal thereon. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

3.9 SUSPENSION OF WORK FOR CONVENIENCE OF CITY - (A) The City shall have the right to take possession of or use any completed or partially completed part of the Work if its stability and integrity is not dependent upon the Contract. Prior to such possession or use, the Project Manager shall furnish the Contractor an itemized list of Work remaining to be performed or corrected on such portions by the City, provided that failure to list any item or work shall not relieve the Contractor of responsibility for compliance with the terms of the Contract. Such possession or use shall not be deemed an acceptance of any Work under the Contract. While the City has such possession or use, the

Contractor, notwithstanding the provisions of the clause of this Contract regarding protection of the Work, shall be relieved of the responsibility for the loss or damage to the Work resulting from the City's possession or use. However, the Contractor will be responsible for any damages that may be caused by defective work or failure to comply with the Contract Documents. If such prior possession or use by the City delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract Sum or the Contract Time will be made and the Contract shall be modified in writing accordingly and the provisions of the Division 8 shall not be applicable. **(B)** Possession and use by the City shall not be construed to constitute an extension of the Contract time to complete the portion of the permanent construction to which it relates if the Contractor has failed to complete it in accordance with the terms of this Contract. Possession and use by the City shall not operate to release the Contractor or his sureties from any obligations under this Contract or the performance bond.

## **DIVISION 4**

### **THE PROJECT MANAGER**

4.1 CITY'S REPRESENTATIVE – The Project Manager will provide administration of the Contract on behalf of the City as herein provided. The Project Manager will be the City's representative during construction and until final payment is due. The City's instructions to the Contractor shall be forwarded through the Project Manager. The Project Manager will have authority to act on behalf of the City only to the extent provided in the Contract Documents; unless otherwise modified by written instrument in accordance with Paragraph 2.1.

4.2 PROJECT MANAGER NOT TO CONTROL CONSTRUCTION – The Project Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Project Manager will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractor, or any other persons performing any of the Work.

4.3 PROJECT MANAGER'S ACCESS – The Project Manager shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Project Manager may perform his functions under the Contract Documents.

4.4 PAYMENTS CERTIFIED – Based on the Project Manager's observations and an evaluation of the Contractor's progress in the Work, the Project Manager will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided herein.

4.5 INTERPRETER OF CONTRACT DOCUMENTS - **(A)** The Project Manager will be interpreter of the requirements of the Contract Documents and the judge of the performance there under for the City. The Project Manager will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon. **(B)** Claims, disputes, and other matters in question between the Contractor and the Project Manager relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be determined by the Project Manager, which he will render in writing within twenty days unless a longer time is agreed. The Project Manager's decision with regard to execution or progress of the Work or interpretation of the Contract Documents will be final.

4.6 AUTHORITY TO REJECT WORK - The Project Manager will have authority to reject Work that does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work whether or not such Work be then fabricated, installed or completed.

4.7 SHOP DRAWINGS APPROVED – The Project Manager will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Project Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.8 CHANGE ORDERS - The Project Manager will prepare Change Orders in accordance with Division 12, and will have authority to order minor changes in the Work as provided in Paragraph 12.5.

4.9 FINAL CERTIFICATE OF PAYMENT – The Project Manager will conduct inspections to determine the dates of Substantial Completion or Final Completion, will receive for the City written warranties and related documents required by the Contract and assembled by the Contractor, and will issue an application for final payment upon compliance with the requirements of Division 9.

4.10 AUTHORITY LIMITED – The duties, responsibilities and limitations of authority of the Project Manager as the City’s representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the City. In case of the termination of the employment of the Project Manager, the City shall appoint a substitute Project Manager who shall have the same powers and responsibilities as the Project Manager defined in the Contract.

## **DIVISION 5 THE CONTRACTOR**

5.1 – REVIEW OF CONTRACT DOCUMENTS – The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Project Manager any error, inconsistency or omission he may discover. The Contractor shall not be liable to the City for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents unless he proceeds with the Work or any part thereof with knowledge of an error, inconsistency or omission. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

5.2 – SUPERVISION AND CONSTRUCTION PROCEDURES – (A) The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. (B) The Contractor shall be responsible to the City for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. (C) The Contractor shall be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Project Manager in his administration of the contract, or by inspections, tests or approvals performed by persons other than the Contractor.

5.3 – SUPERINTENDENT – The Contractor shall give his personal superintendence to the Work or employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be confirmed in writing upon written request in each case.

5.4 – EMPLOYEES – The Contractor shall at all times enforce strict discipline and good order among his employees, and shall seek to avoid employing on the Work any unfit person or anyone not skilled in the Work assigned to him. The Contractor shall provide adequate sanitary facilities for his employees and his Subcontractor’s employees.

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

5.6 – WARRANTY – The Contractor warrants to the City and the Project Manager that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of paragraph 13.3 through 13.5.

5.7 – REMOVAL OF REJECTED MATERIALS – The Contractor shall promptly remove all rejected materials from the site of the Work.

5.8 – TAXES – Prices in bid should be free of all sales taxes. Pursuant to Iowa Code sections 422.42 (15) & (16), the Contractor shall be issued a tax exemption certificate to purchase construction materials that will be incorporated into real property for this project tax free.

5.9 – TAX STATEMENT – If the Contractor includes sales taxes in original bid prices, the Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contract which are legally enacted at the time bids are received, whether or not yet effective. Upon final completion of this Contract and acceptance thereof by the City Council, the Contractor shall furnish the City, in duplicate on Form 35-002, a certified list of all sales taxes and/or use taxes paid by him in connection with the execution of this Contract. The Contractor shall also require each of his subcontractors to keep similar records and to furnish him a sufficient number of such certificates so that he may furnish duplicates thereof to the City. Forms for marking such certified statements may be obtained from the City. All of the above-mentioned certified statements must be filed with the Project Manager within thirty days after the City accepts the completed project.

5.10 – PERMITS, FEES AND NOTICES – (A) Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections, necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received. (B) The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. (C) It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Project Manager in writing, and any necessary changes shall be accomplished by appropriate Change Order. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Project Manager, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

5.11 – WORK PROGRESS – The progress of the Work shall be at a rate sufficient to complete the Contract within the time allowed. If it appears that the rate of progress is such that the Contract will not be completed within the time allowed, or if the Work is not being executed in a satisfactory and workmanlike manner, the Project Manager may order the Contractor to take such steps as he considers necessary to complete the Contract within the period of time specified or to prosecute the Work in a satisfactory manner. If the Contractor fails to comply with such order within two weeks after receipt of the order, he may be disqualified from receiving any additional bidding proposals, and the City shall have the right to declare the Contract in default and to complete the Work in accordance with paragraph 14.2. Failure of the City or the Project Manager to issue such order shall not alter the Contractor's responsibility under the Contract. The Contractor's sequence of operations shall be such as to cause as little inconvenience to the general public as possible.

5.12 – SHOP DRAWINGS – (A) The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the Work of the City or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract. By approving and submitting Shop Drawings, Product Data and Samples, the contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract. (B) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract by the Project Manager's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submission and the Project Manager has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Project Manager's approval thereof. (C) The contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Project Manager or previous submittals.

5.13 – CUTTING AND PATCHING OF WORK – The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly. The Contractor shall not damage or endanger any portion of the Work or the Work of the City or any separate contractors by cutting, patching or otherwise altering any Work, or by excavation. The Contractor shall not cut or otherwise alter the Work of the City or any separate contractor except with the written consent of such separate contractor. The Contractor shall not unreasonably withhold from the City or any separate contractor his consent to cutting or otherwise altering the Work.

5.14 – CLEANING UP – The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials. If the

Contractor fails to clean up at the completion of the Work the City may do so and the cost thereof shall be charged to the Contractor.

5.15 – COMMUNICATIONS – The Contractor shall forward all communications to the City through the Project Manager. Prior to commencement of the Work, the Contractor shall provide the Project Manager with a telephone number where the Contractor or his superintendent can be reached in an emergency at any time after commencement of the Work until the date of Final Completion.

5.16 – ROYALTIES AND PATENTS – The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the City harmless from loss on account therefore, except that the City shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Project Manager.

5.17 – USE OF JOB SITE – The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety. The Contractor shall enforce any instructions regarding signs, advertisements, fires and smoke given him by the City.

5.18 – SUBLETTING OR ASSIGNING OF CONTRACT – (A) The City will not recognize any subcontractor on the Work as having any prime contractor responsibility. (B) Should the Contractor elect to assign this Contract, the assignment shall be approved by the Contractor's bonding company, and shall then be presented for consideration by the City. Assignment can only be consummated after approval by the City. The City's decision on whether to consent to an assignment shall be conclusive and no appeal by the Contractor shall be permitted.

5.19 – SITE INVESTIGATION – The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the City, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for any understanding or representations concerning conditions made by any of its officers or agents or the Project Manager prior to the execution of this contract, unless such understanding or representations by the officers and agents are expressly stated in the Contract. The City assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the City.

## **DIVISION 6 WORK BY CITY OR SEPARATE CONTRACTORS**

6.1 – CITY'S RIGHTS – The City reserves the right to perform work related to the Project with its own forces and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the City, he shall make such claim as provided elsewhere in the Contract Documents.

6.2 – COORDINATION – The City will provide for the coordination of the Work of its own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.3.

6.3 – ACCESS – The Contractor shall afford the City and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his work with theirs as required by the Contract Documents.

6.4 – DEFECTS – If any part of the Contractor's Work depends on proper execution or results upon the work of the City or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Project Manager any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the City's or separate contractors'

work as fit and proper to receive his Work, except as to defects that may substantially become apparent in such work by others. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

6.5 – DAMAGES TO WORK – Should the Contractor cause or allegedly cause damage to the work or property of the City, or to other work on the site, the contractor shall promptly remedy such damage as provided in Paragraph 10.6.

6.6 – DUTY TO DEFEND – Should the Contractor wrongfully cause or allegedly cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the City on account of any damage alleged to have been caused by the Contractor, the City shall notify the Contractor who shall defend such proceedings at his expense, and if any judgment or award against the City arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the City for all attorneys’ fees and court or arbitration costs which the City has incurred. If the Contractor prevails, the City shall pay any expenses not recovered from the separate contractor incurred as a result of any negligent act on the part of the City’s officers, agents or Project Manager.

6.7 – CITY’S RIGHT TO CLEAN UP – If a dispute arises between the Contractor and separate contractors as to their responsibility for the cleaning up as required by Paragraph 5.14, the City may clean up and charge the cost thereof to the contractors responsible therefore as the Project Manager shall determine to be just.

## **DIVISION 7 MISCELLANEOUS PROVISIONS**

7.1 – ARBITRATION – Any controversy of claim arising out of or relating to this Contract, or the breach thereof which cannot be resolved by mutual agreement, may be settled by arbitration only if the times, places, arbitrators, and various rules or arbitration conduct can be mutually agreed upon in writing and approved by the Contractor and City in writing, any other paragraph, law or rule notwithstanding.

7.2 – INSPECTION AND TESTING - (A) All work (which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components) shall be subject to inspection and test by the Project Manager at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of providing quality control measures to assure that the Work strictly complies with the Contract requirements. No inspection or test by the Project Manager shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, not in any way affect the continuing rights of the City after acceptance of the completed Work. (B) The Contractor shall, without charge, replace any material or correct any workmanship found by the Project Manager not to conform to the Contract requirements, unless in the public interest the City consents to accept such material or workmanship with an appropriate adjustment in Contract Sum. The Contractor shall promptly segregate and remove rejected material from the premises. (C) If the contractor does not promptly replace rejected material or correct rejected workmanship, the City 1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or 2) may terminate the Contractor’s right to proceed in accordance with Division 14 of this contract entitled “Termination.” (D) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Project Manager. All inspection and test by the Project Manager shall be performed in such manner as not unnecessarily to delay the Work. Special, full size, and performance tests shall be performed as described in this Contract. The City reserves the right to charge to the Contractor any additional cost of inspection or test when material or workmanship is not ready at the time specified by the Contractor for inspection or test or when re-inspection or retest is necessitated by prior rejection. (E) The City may employ an Inspector, working under the Project Manager, for the inspection of the Work while such Work is in progress to ascertain that the completed Work will comply in all respects with the standards and requirements set forth in the Specifications. (F) The Inspector is authorized to carry out orders of the Project Manager. In the event of a dispute between the Inspector and the Contractor, the Project Manager shall resolve the matter. (G) Under no circumstances is an Inspector authorized in any manner to alter, vary or waive any requirement of the Contract. Neither affirmative approval nor silence shall operate to relieve the Contractor from the responsibility of strictly complying with the Contract requirements. Conclusive approval of materials and workmanship may be given by the Project Manager if requested by the Contractor.

7.3 – PREFERENCE FOR IOWA PRODUCTS AND LABOR – The Contractor shall give preference to products and provisions grown and coal products within the State of Iowa, and to Iowa domestic labor in the construction of the work over foreign products and labor and shall otherwise comply with the provisions of Chapter 73 of the Code of Iowa.



7.4 – SUBCONTRACTORS – (A) The Contractor shall, as soon as practicable after signing of the Contract, notify the Project Manager in writing of the names of subcontractors proposed for the Work. (B) The City reserves the right to object to the use of any proposed subcontractor who: 1) Is currently in violation of any law, ordinance or regulation governing affirmative action programs; 2) Has defaulted on any prior project with the city and such default has not been cured to City’s satisfaction; 3) Does not possess the necessary licenses or skills to perform the Work.

7.5 – JURISDICTION – The Scott County, Iowa, District Court shall have exclusive jurisdiction of all litigation between the Contractor and the City.

**DIVISION 8  
TIME**

8.1 – COMMENCEMENT OF THE WORK – The Contractor shall commence the Work on the date specified in a notice to proceed, in the absence of a notice to proceed within ten days following the date of approval of the contract bond and insurance by the City. The first working day shall be the date specified in the notice to proceed or the date the Contractor actually commences the Work, whichever is earlier. The Contractor shall carry the Work forward expeditiously with adequate workers, equipment, and materials so that it will achieve Final Completion within the Contract Time.

8.2 – TIME IS OF THE ESSENCE – All time limits stated in the Contract Documents are of the essence in the Contract.

8.3 – LIQUIDATED DAMAGES – (A) The Contractor shall pay to the City as liquidated damages and not as a penalty the sum of money set forth in the Form of Contract for each working day between the contract time and the date of final completion, including general cleanup and the removal of all equipment and obstructions from the site of the Work. Such liquidated damages shall be payable to reimburse or compensate at least in part, the City for: 1) the administration of the Work covered by such Contract and any other contract or contracts beyond the contract Completion Date, but not the additional engineering expenses directly attributable to the Work and incurred because of the delay; 2) expenditures resulting from the inability of the City and the general public to use the improvement being constructed from and after such Contract Completion Date until the actual date of completion; 3) other miscellaneous obligations and expenditures incurred by the City directly as a result of the failure to complete the Work covered by such Contract on or before the Contract Completion Date. It is agreed that these damages are difficult of precise measurement at the inception of the contract and the sum stated herein is the best possible estimate of the damages that will accrue because of delay. (B) The assessment of liquidated damages for failure to complete the Work by the Contract Completion Date shall not constitute a waiver of the City’s right to collect engineering expenses directly attributable to the Work and incurred because of the delay in completion. (C) The total amount so payable by the Contractor as liquidated damages may be deducted from any monies due and payable to the Contractor by the City or so much thereof as is not deducted shall be chargeable to and will be payable promptly by such Contractor or his bonding company to the City.

8.4 – DELAYS AND EXTENSIONS OF TIME – (A) If the Contractor is delayed at any time in the progress of the work by: 1) any act or neglect of the City or the Project Manager; 2) by any employee of either the City or the Project Manager; 3) by any separate contractor employed by the City; 4) by changes ordered in the Work; 5) by labor disputes; 6) fire; 7) unusual delay in transportation; 8) adverse weather conditions not reasonably anticipatable; 9) unavoidable casualties; 10) any causes beyond the Contractor’s control; 11) by delay authorized by the City pending arbitration; 12) or by any other cause which the Project Manager determines may justify the delay, then working days shall not be charged for such reasonable time as the Project Manager may determine. (B) However, before the working days will not be charged to the contractor, the delay and subsequent failure to perform must be beyond the control of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress and if such failure arises out of causes beyond the control of both the Contractor and subcontractor and without fault or negligence of either of them, the Contractor shall not be deemed to be in fault unless: 1) the supplies or services to be furnished by the subcontractor were obtained from other sources; 2) the Project Manager shall have ordered the contractor in writing to procure such supplies or services from other sources; and 3) the Contractor shall have failed to comply reasonably with such order.

8.5 – CLAIMS FOR ADDITIONAL WORKING DAYS – (A) The Project Manager shall prepare a weekly report of the working days charged. This report shall be signed by the Project Manager and the Contractor. If the contractor chooses to protest the charging of any working day, he shall file with the Project Manager written protest specifying his reasons

within ten days after the last day of any week for which a day was charged that is disputed. The Project Manager shall review these documents and shall make the final decision on the number of working days to be charged. (B) Any claim for additional contract time shall be made in writing to the Project Manager not more than seven days after occurrence of the event giving rise to the claim; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such claim on the progress of the Work. The Project Manager shall promptly investigate the Contractor's claim for additional contract time and if justified, he shall notify the Contractor in writing and an equitable adjustment shall be made and the Contract modified pursuant to Division 12. (C) If weather conditions become such that construction work must be suspended until springtime, the Contractor will be sent a written notice to continue work, which will specify a date to resume work and will show the number of working days remaining to complete the job. The written notice to continue work will be sent to the Contractor at least ten days before the specified date to proceed. However, working days will be charged beginning on the day work actually starts, if it is before the notice date. Resumption dates are normally specified for around March 15<sup>th</sup> or as weather permits.

8.6 – DELAY FOR INTERPRETATIONS – If no agreement is made stating the dates upon which interpretations as provided in Paragraph 4.5 shall be furnished, then no claim for additional contract time shall be allowed on account of failure to furnish such interpretations until twenty days after written request is made for them, and not then unless such claim is reasonable.

8.7 – NO DAMAGES FOR DELAY – Paragraph 8.4 precludes the recovery of damages for delay for reasons (d) through (1) under any other provision of the Contract Documents. Paragraph 8.4 also precluded the recovery of damages for delay for reason (A) through (C) unless a single delay extends for more than fifteen days or aggregate delays from two or more work stoppages total more than twenty-one days and then only for the excess days in either case. Paragraph 8.6 precludes the recovery for damages for delays under the circumstances enumerated therein. In addition, no damages for delays can be recovered for reasons 8.4 (A) through 8.4 (C) to the extent the delay would have occurred in any event due to any other cause, including the negligence of the Contractor; or, for which an adjustment is provided or excluded under any other provision of this Contract. There shall be no allocation of fault during concurrent delays.

8.8 – PROCEDURE FOR APPEAL OF THE PROJECT MANAGER'S DECISION – (A) If the Project Manager determines the claim of the contractor does not justify additional time to complete the project or lesser time than the Contractor requested, he shall so notify the Contractor in writing within twenty days from submission of the claim. If the Project Manager fails to respond to any claim within the time allocated, the claim shall automatically be deemed denied by the Project Manager. (B) The decision of the Project Manager shall be final and binding upon the Contractor unless the Contractor appeals the decision of the Project Manager to the City Council. Such appeal shall be taken within twenty days from the Project Manager's decision and full statement of the facts surrounding the claim and the additional working days requested. The City Council shall fix a date, time and place to hear the matter, which date shall not be less than thirty days from receipt of the request for review. If the Matter is not heard within thirty days or a decision not rendered by the City Council within fifteen days of the hearing, the claim shall automatically be deemed denied by the City Council. (C) The decision of the City Council shall be final and binding upon the Contractor unless within six months from the date of the decision of the City Council, the City and the Contractor agree in writing to arbitration or the Contractor files suit in the Scott County, Iowa, District Court.

8.9 – CHANGE ORDER REQUIRED – Any approved claim for additional contract time under the provisions of this Division shall be granted by change order.

8.10 – EXTENSIONS OF TIME – Except for an extension of the contract time, the Project Manager may, upon written request and for good cause shown by the Contractor, grant an extension of time to perform any act required by the Contract. The request for an extension of time must be made within the time to initially perform the act. An extension of time must be in writing and signed by the Project Manager.

## **DIVISION 9 PAYMENTS AND COMPLETION**

9.1 – PAYMENT FOR WORK PERFORMED – The Contractor will receive and accept as full payment for all items of acceptable Work performed which are covered by definite unit prices or lump sum amounts specified in the Form of Contract, the rate specified therein, or in the case of work under a change order, the amount stated in the change order.

9.2 – APPLICATION FOR PAYMENTS – Application for payments shall be made by the Project Manager on forms provided by the City.

9.3 – MEASUREMENT OF QUANTITIES – The Work completed under the Contract shall be measured according to United States standard measures. Payment will be based on the actual quantity of work performed under the various classifications of Work in the Contract.

9.4 – SCOPE OF PAYMENT – The Contractor shall accept the compensation herein provided as full payment for furnishing all materials, labor, tools, and equipment and for performing all work under the Contract or any extension thereof allowed under Division 12; also, for all costs arising from the action of the elements or other natural causes, agreements, and performances, non-performance or delays involving other contractors and third parties, or injunctions or lawsuits resulting there from, or from any unforeseen difficulties not otherwise provided for in the specifications and which

may be encountered during prosecution of the Work and up to the time of acceptance thereof, except damage to the Work due to acts of war. Nothing herein shall in and of itself be construed to prejudice or deny any claim filed under provisions of Division 15.

9.5 – MATERIAL DELIVERED TO WORK SITE – Unless otherwise provided in the Contract Documents, payments may be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site or at some other location agreed upon in writing, if approved in advance by the Project Manager. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Project Manager to establish to the City's title to such materials or equipment or otherwise protect the City's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.6 – TITLE – The contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the City either by incorporation in the construction or upon the receipt of payment by the Contractor. This paragraph shall not negate or abridge the Contractor's obligations with regard to protection of the Work in Division 10 or to any warranties required by the Contract.

9.7 – PAYMENTS - (A) If the Work extends over a period of more than one month, the Contractor will receive monthly progress payments from the City based on the Project Manager's estimate of work completed in an acceptable manner. The City's monthly payments shall be partial payments on the contract sum and the monthly payment by the City does not constitute acceptance of the work upon which the estimates are based. (B) Work completed in an acceptable manner during the month shall be paid for by the City within thirty-five days from the last day of the month. (C) The City shall retain from each monthly payment five percent of that amount which is determined to be due by the Project Manager. Interest shall be paid at the rate of ten percent per annum on delayed monthly progress payments.

9.8 – PROJECT MANAGER'S REPRESENTATIONS – Submission of an application of payment signed by the Project Manager will constitute a representation by the Project Manager to the City, based on his observations at the site that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial or Final Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in an attachment to the estimate) and that the Contractor is entitled to payment in the amount certified.

9.9 – PAYMENTS TO SUBCONTRACTORS – The City shall not have any obligation to pay or to see to the payment of any monies to any Subcontractor or suppliers.

9.10 – PAYMENT NOT ACCEPTANCE OF DEFECTIVE WORK - No estimate made for a progress payment, nor any progress payment, nor any partial or entire use of occupancy of the Project by the City shall constitute acceptance of any Work not in accordance with the Contract Documents.

9.11 – PAYMENTS WITHHELD – (A) The Project Manager may decline to submit an application for payment and may withhold his estimate in whole or in part, to the extent necessary reasonably to protect the City, if in his opinion his is unable to make representations to the City as provided in Subparagraph 9.8 and thus submit the application, he will notify the Contractor. The Project Manager may also decline to submit an application for payment or, because of

subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any estimate authorizing payment previously issued, to such extent as may be necessary in his opinion to protect the City from loss because of: 1) defective work not remedied; 2) damage to the City or another contractor; 3) reasonable evidence that the Work will not be completed within the Contract Time but only to the extent of liquidated damages; 4) persistent failure to carry out the Work in accordance with the Contract Documents. When the above grounds are removed, payment shall be made for amounts withheld because of them.

9.12 – FAILURE OF PAYMENT – If the Project Manager does not prepare an application for payment as provided for in Paragraph 9.7B, through no fault of the Contractor, the Contractor may, upon seven additional days written notice to the City, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shutdown, delay and start-up, which shall be effected by appropriate Change Order in accordance with Division 12.

9.13 – SUBSTANTIAL COMPLETION – (A) The Date of Substantial Completion of the Work or designated portion thereof is the Date Certified by the Project Manager when construction is sufficiently complete, in accordance with the Contract Documents, so the City can occupy or utilize the Work or designated portion thereof for the use for which it is intended, as expressed in the Contract Documents. (B) When the contractor considers that the Work or a designated portion thereof is substantially complete, the Contractor shall request the Project Manager to make an inspection. If the Project Manager determines that the Work is substantially complete, the Project Manager shall prepare a Certificate of Substantial Completion and prepare a list of work items, which shall be completed or corrected. The failure to include any item on the list does not alter the responsibility of the Contractor to complete all Work in accordance with the contract documents. The Certificate of Substantial Completion shall state the responsibility of the City and Contractor for security, maintenance, heat, utilities, damage to the work, and insurance. Warranties required by the contract documents shall commence on the date of Substantial Completion unless otherwise provided in the Certificate of Substantial Completion. (C) If after the Work has been substantially complete, and work towards Final Completion thereof cannot proceed for a period of more than sixty days through no fault of the Contractor, and the Project Manager so certifies, the City may make Final Payment for that portion of the work fully completed and accepted, provided the Contractor enters into a supplemental contract on the same terms and conditions as far as applicable for the Work remaining to be done and such other necessary matter, as determined by the Project Manager. The Contractor’s bondsman must consent to the Contract and agree that the bond shall remain in full force and effect.

9.14 – FINAL COMPLETION – (A) The Date of Final Completion is the date of the letter from the Project Manager to the Contractor indicating all of the Work is completed to the satisfaction of the City. (B) When the Contractor considers that all of the Work is in accordance with the contract documents, the contractor shall request the Project Manager to make an inspection. When all Work items are in accordance with the contract documents, the Project Manager shall promptly notify the Contractor by letter and issue a pay estimate for the Contract sum less a 5% retainage.

9.15 – ACCEPTANCE – (A) The Date of Acceptance of the Work is the Date of either: 1) the letter of Final Completion from the Project Manager to the Contractor when the letter clearly states acceptance is being given, or 2) the date of the City Council meeting when the Council approves a Resolution accepting the Work. (B) The Contractor shall within ten (10) days of the City’s acceptance of the Work cause to be published in the Quad-City Times a notice stating that the City has accepted the Work and that all subcontractors and suppliers of labor, materials, services, or transportation may file an itemized, sworn, written claim with the City for the unpaid portion of their work, if any. Also, the Contractor shall furnish the City with the tax statements required in Paragraph 5.9.

9.16 – FINAL PAYMENT – Final Payment which shall be payment of the 5% retainage shall be made in accordance with the provisions of Chapter 573, Code of Iowa.

## **DIVISION 10**

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 Work.

10.2 – CONTRACTOR’S OBLIGATION – (A) The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: 1) all employees on the Work and all other persons who may be affected thereby; 2) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of the Subcontractors or Sub-subcontractors; and 3) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks,

pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.3 – COMPLIANCE WITH APPLICABLE LAWS – The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.4 – CONTRACTOR TO ERECT SAFETY DEVICES – The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.5 – EXPLOSIVES – When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.6 – REMEDY DAMAGE OR LOSS – The Contractor shall promptly remedy all damage or loss caused in whole or in part by the Contractor, any sub-contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Paragraph 10.2 (B) and (C), except damage or loss attributable to the acts or omissions of the City or Project Manager 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 his obligations under Paragraph 11.9.

10.7 – PERSON DESIGNATED AS SAFETY ENGINEER – The contractor shall designate a responsible member of his 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 City and the Project Manager.

10.8 – LOADING WORK – The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.9 – EMERGENCIES – In any emergency affecting the safety of persons or property, the contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of the time claimed by the Contractor on account of emergency work shall be determined as provided in Divisions 12 and 15.

10.10 – PUBLIC RIGHT OF WAY OCCUPANCY - (A) – If it is necessary to partially or completely close any street for the purpose of construction or excavation, the contractor shall: 1) seventy-two hours prior to partially or completely closing a street notify the City Transportation Department of the closing; 2) twenty-four hours prior to completely closing a street, notify local residents of the closing in order to allow them to arrange other temporary ingress and egress to their property and to remove automobiles, etc. from their parking area; 3) for the purpose of this paragraph, "partially close" means closing one or more of the driving lanes; 4) when the street is to be open, the Transportation Department shall be notified on the same day. (B) In either case of partially or completely closing the streets, the Contractor shall reopen the streets immediately upon completion of his work. (C) The Contractor shall be responsible for proper barricading, indicating that all or part of the street is closing to through traffic, and shall have direction and detour signs at the end of the street under construction. The signing shall conform to the traffic control plans in the Contract and/or as directed by the Transportation Department of the City. All barricades, warning signs, and devices are to be supplied, erected, maintained, and be the responsibility of the Contractor. The barricades, signs and devices shall conform to the Manual on Uniform Traffic Control Devices. Proper safety measure shall also be utilized and furnished by the Contractor at all times, including all necessary warning signs, flares, barricades, flagmen, etc.

## **DIVISION 11 INSURANCE AND INDEMNIFICATION**

11.1 – CONTRACTOR'S INSURANCE – The Contractor shall secure and maintain such primary insurance policies as will protect himself or his Sub-contractors from claims for bodily injuries, death or property damage which may arise from operations under this Contract whether such operations be by himself or by any Sub-contractor or anyone employed by them directly or indirectly. The following insurance policies are required unless other limits are specified in the "Advertisement for Bids":

(A) Statutory Worker's Compensation	
(B) General Liability	
a. General Aggregate	\$ 1,000,000
b. Products Completed	\$ 1,000,000
c. Each Occurrence	\$ 1,000,000
(C) Automobile Liability	
a. Any Auto, Hired & Non Owned	
b. Combined Single Limit	\$1,000,000
(D) Excess Liability	
a. Umbrella Form	\$2,000,000

11.2 - INSURANCE INCLUSIONS – The general liability insurance shall include products liability, products and completed operations and broad form property damage coverage. The completed operations and products liability shall be maintained for two years after final payment. Property damage shall include coverage for explosion, collapse, and underground damage.

11.3 – CONTRACTUAL LIABILITY – The insurance required by Subparagraph 11.1 shall: (A) be primary insurance and if the City has insurance that is applicable to a loss, such insurance shall be on an excess or contingent basis. (B) include contractual liability insurance coverage for the contractor's obligations under Paragraph 11.8.

11.4 – CERTIFICATES OF INSURANCE – Certificates of Insurance acceptable to the City indicating insurance required by the Contract shall be filed with the City prior to approval of the Contract by the City. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty days prior written notice has been given to the City.

11.5 – PROPERTY INSURANCE – Unless otherwise provided, the Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "builder's risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If the City is damaged by failure of the Contractor to purchase or maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto. The Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment.

11.6 – BOILER INSURANCE – The City shall purchase and maintain such boiler and machinery insurance as may be required by the Contractor Documents. This insurance shall include the interest of the City, the Contractor, Subcontractor and Sub-subcontractors in the Work.

11.7 – LOSS ADJUSTMENTS – Any loss insured under Subparagraph 11.5 is to be adjusted with the Contractor and made payable to the Contractor as trustee for the insured, as their interests may appear. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

11.8 – INDEMNIFICATION – (A) To the fullest extent permitted by the law, the Contractor shall defend, indemnify, and hold harmless the City, its officials and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to all attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense, 1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than use resulting there from, and 2) is caused in whole or in part by any negligent act or omission of the Contractor, any Sub-contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this Paragraph. (B) In any and all claims against the City, its officials or any of its agents or by any employee of the Contractor, and Subcontractor, anyone directly or indirectly employed by any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers; or workmen's compensation acts, disability

benefit acts or other employee benefit acts. (C) The obligations of the Contractor under this Paragraph shall not extend to the liability of the City, its agents or employees, arising out of 1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or 2) the giving of or the failure to give directions or instructions by the Project Manager or his representatives providing such giving or failure to give is the primary cause of the injury or damage.

## **DIVISION 12 CHANGES IN WORK**

12.1 – CHANGE ORDERS – The Contract Price, the Contract Sum and the Contract Time may be changed by Change Order. A Change Order signed by the Project Manager and the contractor and approved by the City indicates conclusive agreement therewith, including the adjustment in the Contract Price, Contract Sum or the Contract Time. A Change Order signed by the Project Manager and Contractor, and subsequently approved by the City, may not be the subject matter of any claim, suit, or arbitration.

12.2 – CITY'S AUTHORITY – The City, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Price, the Contract Sum or the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by written Change Order, and shall be performed under the applicable conditions of the Contract Documents. Change Orders shall be prepared by the Project Manager and presented to the Contractor for his signature. If signed by the Contractor, the Project Manager shall sign the Change Order and then submit it to the City for final approval.

12.3 – COST OR CREDIT DETERMINATIONS – (A) The cost or credit to the City resulting from a change in the Work shall be determined by one of the following ways: 1) by unit prices contained in the Contractor's original bid and incorporated in the Contract Documents; 2) by a supplemental schedule of prices contained in the Contractor's original bid and incorporated in the Construction Document; 3) by an acceptable unit price proposal from the Contractor; 4) by an acceptable lump sum proposal from the Contractor; 5) by force account basis. The order of preference shall be listed. The applicability 1) or 2) shall foreclose the use of 3), 4) or 5).

12.4 – FORCE ACCOUNT BASIS – (A) Extra work performed on the force-account basis will be paid for in the following manner: For laborers, timekeepers, foremen and superintendents, the Contractor shall receive the rate of wage shown on previous payrolls for the time they are actually engaged in the Extra Work, to which shall be added an amount equal to fifteen percent thereof, plus the amount of social security tax imposed by law upon the Contractor because of such force-account work, plus the cost of worker's compensation, public liability insurance, and employment security contributions. The fifteen percent shall cover compensation for the furnishing of the necessary small tools for the Work together with all other overhead items of expense. The wage of the superintendent, timekeeper, or foreman who is employed partly on force-account work and partly on other work shall be prorated between the two classes of work according to the number of men shown by the payrolls as employed on each class of work. (B) For materials used on force-account work, the Contractor shall receive the actual cost of materials delivered on the work, including the freight and handling charges as shown by original receipted bills, to which cost shall be added a sum equal to fifteen percent thereof. (C) For machinery, tools or equipment, and fuel and lubricants therefore, except small hand tools, which may be used, the Project Manager shall allow the Contractor a reasonable rental rate to be agreed by the Contractor before such work is begun. No profit percentage shall be added to the rate. (D) Compensation as herein provided shall be accepted by the Contractor as payment in full for extra work done on a force-account basis. It will be assumed that such payment includes the use of tools and equipment for which no rate is allowed, overhead, and profit.

12.5 – MINOR CHANGES IN THE WORK – The Project Manager shall have authority to order minor changes in the Work not involving an adjustment in the Contract Price or Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by either oral or written order, and shall be binding on the City and the Contractor. The Project Manager shall also have the authority to issue change orders consisting of additions, deletions, or other revisions affecting the Contract Sum and Contract Time, providing such change does not exceed \$10,000. Such a Change Order shall be prepared by the Project Manager, and submitted to the Contractor for his signature. If approved and signed by the Contractor and the Project Manager, the Change Order shall be binding upon the City and the Contractor and may not be the subject matter of any claim, suit or arbitration.

## **DIVISION 13 UNCOVERING AND CORRECTION OF WORK**

13.1 – UNCOVERING OF WORK FOR INSPECTION – If any portion of the Work should be covered prior to the Project Manager or Inspector having an opportunity to inspect it, it must, if required by the Project Manager, be uncovered for his observations. The costs of uncovering and restoring the work shall be the Contractor's expense.

13.2 – UNCOVERING WORK NOT INSPECTED – If the Project Manager or inspector authorizes any portion of the Work to be covered which they did not inspect prior to being covered they may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and restoring the Work shall, by appropriate Change Order, be charged to the City. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the City or a separate contractor as provided in Division 6, in which even the City shall be responsible for the payment of such costs.

13.3 – CORRECTION OF WORK – The Contractor shall promptly correct all Work rejected by the Project Manager as defective or as failing to conform to the Contract Documents whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Project manager's additional services made necessary thereby.

13.4 – WARRANTY WORK – If, within one year from the date of acceptance any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The City shall give such notice promptly after discovery of the condition. If the Work is covered by a bond, the City shall also notify the Contractor's bonding company.

13.5 – FAILURE TO CORRECT – If the Contractor fails to correct defective or non-conforming Work as provided in Paragraph 5.6, 13.3 and 13.4, the City may correct it in accordance with Paragraph 3.8. If the Work is covered by a bond, the City shall have the right to require the Work be done by the Contractor's bonding company.

13.6 – ACCEPTING DEFECTIVE WORK – If the City prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected. Whether or not final payment has been made.

## **DIVISION 14**

### **TERMINATION OF THE CONTRACT**

14.1 – TERMINATION BY THE CONTRACTOR – If the Work is stopped for a period of thirty days under an order of any Court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty days by the contractor because the Project Manager has not prepared an Application for Payment as provided in Paragraph 9.2 or because the City has not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven additional days' written notice to the City, terminate the Contract and recover from the City payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 – TERMINATION BY THE CITY – If the contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, fails to start the Work on time or fails to prosecute the Work so as to be able to finish on time, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the City, may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.



14.3 – COSTS OF FINISHING WORK – If the unpaid balance of the Contract Sum exceeds the costs of finishing the work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor or his bonding company shall pay the difference to the City.

14.4 – TERMINATION FOR THE CONVENIENCE OF THE CITY- (A) The performance of work under these Contract Documents may be terminated by the City in accordance with this paragraph in whole, or from time to time in part, whenever the City Council shall determine that such termination is in the best interests of the City. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying: 1) what work is to terminate; 2) when the termination is to become effective; 3) the action to be taken with regard to subcontractors; 4) the action to be taken with regard to materials on hand but not incorporated into the Work; 5) the manner in which remaining work will be handled. (B) The Contractor shall submit to the Project Manager any termination claim he may have within three months of the notice of termination. The Contractor shall be entitled to payment for all Work performed up to the date of termination based upon the unit prices in the Form of Contract, plus the expenses incurred in terminating the Contract, less payments made, and less any credits received from Subcontractors and suppliers. (C) In the event the Project Manager and the Contractor are unable to agree upon an amount, the Contractor may proceed under the provisions of Paragraph 15.4.

14.5 – REMOVAL OF EQUIPMENT – In the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of his equipment and supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

## **DIVISION 15 CLAIMS**

15.1 – CLAIMS FOR ADDITIONAL COST – WORK - (A) If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the City through the Project Manager written notice thereof within ten days after the occurrence of the event giving rise to such claim (or such shorter time as will provide the City with the opportunity to investigate the event and make a record of the circumstances surrounding same). This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.9. No such claim shall be valid and is waived by the Contractor unless so made. The fact that the City, its officials, agents or employees or the Project Manager have actual knowledge of the event shall not relieve the Contractor of this requirement. (B) The Project Manager shall promptly investigate the Contractor's claim, and upon completion of the investigation, notify the Contractor to proceed with the Work. If the claim is justified, he shall notify the Contractor in writing and an equitable adjustment shall be made and the contractor modified in writing pursuant to Division 12. (C) The Contractor shall afford the Project Manager notice and opportunity to keep strict account of actual costs incurred as defined for force-account construction for the work giving rise to the claim. If the Contractor fails to do so, he thereby agrees to waive the claim for extra compensation for such work. The fact that the Project Manager has kept an accounting of the costs shall not be construed as establishing the validity of the claim.

15.2 – CLAIMS FOR ADDITIONAL COST – ORDERS – If the Contractor claims that additional cost is involved because of (1) any written interpretation pursuant to Subparagraph 4.5; 2) any order by the City to stop the Work pursuant to Paragraph 3.7 where the Contractor was not at fault; 3) any written order for a minor change in the Work issued pursuant to Paragraph 12.5; 4) failure of payment by the City pursuant to Paragraph 9.12; or 5) any other conduct on the part of the Project Manager or City, the Contractor shall make such claim as provided in Subparagraph 15.1.

15.3 – DIFFERING SITE CONDITIONS – (A) In order to preserve any claim for differing site conditions, the Contractor shall promptly, and before such conditions are disturbed, but in no event later than seven days after discovery, notify the Project manager in writing of: 1) such subsurface or latent physical conditions at the site the Contractor feels differ materially from those indicated in this Contract or, 2) such unknown physical conditions at the site which in the opinion of the Contractor are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract; and 3) the delay, if any, and the additional cost, if any, the Contractor expects because of the different conditions. The Project Manager shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, he shall notify the Contractor in writing and an equitable adjustment shall be made and the Contract modified in writing accordingly in accordance with Division 12.

(B) No claim of the Contractor under this paragraph shall be allowed and shall be deemed waived by the Contractor unless the contractor has given the notice required in (A) above regardless of the fact that the City's agents or employees or the Project Manager may be aware of the alleged different conditions. (C) No claim of the Contractor under this paragraph shall be allowed and shall be deemed waived by the Contractor if the differing site condition has been disturbed before examination and investigation by the Project Manager.

15.4 – PROCEDURE FOR APPEALING THE PROJECT MANAGER'S DECISION – (A) – If the Project Manager determines that any claim of the Contractor does not justify an increase in the Contract Sum, he shall so notify the Contractor in writing within twenty days. If the Project Manager fails to respond to any claim within the time allotted, the claim shall automatically be deemed denied by the Project Manager. (B) The decision of the Project Manager shall be final and binding upon the Contractor unless the Contractor appeals the decision of the Project Manager to the City Council. Such appeal shall be taken within twenty days from the Project Manager's decision by filing with the City Clerk a request for review of the Project Manager's decision and full statement of the facts surrounding the claim and the amount of the claim. The City Council shall fix a date, time, and place to hear the matter, which date shall be not less than thirty days from receipt of the request for review. If the matter is not heard within thirty days or a decision not rendered by the City Council within fifteen days of the hearing, the claim shall automatically be deemed denied by the City Council. (C) The decision of the City Council shall be final and binding upon the Contractor unless within one month from the date of the decision of the City Council or such additional time as the City may agree upon, the City and the contractor agree in writing to arbitration or the Contractor files suit in the Scott County District Court.

15.5 – PROCEDURE FOR DETERMINING COSTS – If the City and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the provisions of Paragraph 12.3.

15.6 – SUBMISSION OF CLAIM – (A) If the Project Manager or the City Council determines that a claim should be denied and if the Contractor desires further appeal of the matter, he shall submit to the Project Manager an itemized statement of each month's additional expenditures no later than thirty days after the last day of the month such expenditures are incurred. Failure to submit the statement required herein shall constitute a waiver of the expenses incurred during that month. (B) No increase in the claim for additional costs of construction will be allowed if made more than thirty days after submission of the initial claim and Contractor agrees to waive those costs. (C) The amount of the claims submitted pursuant to the provisions of this paragraph shall establish the maximum allowable claim of the Contractor in any further proceedings to determine the validity and amount of the contested claim.

15.7 – AUDIT OF CLAIMS – The City may, at reasonable times and places, audit the books and records of the Contractor who has submitted a claim pursuant to the provisions of Division 15 to the extent that such books and records relate to the cost and pricing data used in said claim. If the Contractor makes such a claim, he shall maintain his books and records until such time as the claim is finally resolved. If any records are lost or destroyed which would have substantiated the Contractor's claim, the claim shall be deemed waived by the Contractor.

15.8 – CONTRACTOR TO CONTINUE WORK – Nothing contained in this division shall be construed to permit the Contractor from continuing to prosecute the Work so as to complete the Project within the allotted time.

15.9 – INTEREST – No claim for interest may be allowed which exceeds ten percent per annum.

15.10 – WAIVER OF CLAIMS – The Contractor waives all claims, and no claim shall be allowed regardless of its nature unless made within thirty days after the final completion on the contract time plus any days charged under Paragraph 8.3, whichever occurs first.

**FORM OF CONTRACT**

THIS CONTRACT, made the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2002, by and between \_\_\_\_\_ hereinafter called the "Contractor", and the City of Davenport, Scott County, Iowa, hereinafter call the "City", WITNESSETH, that the Contractor and the City for the consideration stated herein agree as follows:

ARTICLE I. SCOPE OF WORK - The Contractor shall perform everything required to be performed and shall provide and furnish all of the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workmanlike manner all of the work required in connection with \_\_\_\_\_ all in strict accordance with the plans and specifications, including any and all addenda prepared by: \_\_\_\_\_, which plans and specifications are made a part of this Contract; and in strict compliance with the Contractor's proposal and the other Contract Documents herein mentioned which are a part of this Contract; and the Contractor shall do everything required by this Contract and the other documents constituting a part thereof.

ARTICLE II. THE CONTRACT PRICE – The City shall pay to the Contractor for the performance of this Contract, subject to any additions or deductions provided therein, in current funds, the Contract Price computed as follows:

BASE BID: Complete the project for:

\_\_\_\_\_ DOLLARS \_\_\_\_\_ CENTS (\$ \_\_\_\_\_ )

**Alternate 1**

\_\_\_\_\_

**Alternate 2**

\_\_\_\_\_

ARTICLE III. UNIT PRICES. Not applicable to this contract.

ARTICLE IV. PAYMENTS – Payments are to be made to the Contractor in accordance with and subject to the provisions embodied in the documents made a part of this Contract.

ARTICLE V. TIME OF COMPLETION – Working days after this contract shall commence on the date specified in the written notice to proceed from the City to the Contractor who shall diligently prosecute and complete all work under this Contract.

ARTICLE VI. LIQUIDATED DAMAGES – For each and every working day that elapses between the Contract Completion Date and the date on which the work covered by such Contract is actually completed, including the removal of all plant and obstructions from the site of such work, the contractor shall pay to the City as liquidated damages and not as a penalty, the sum of One Hundred Dollars (\$100.00).

ARTICLE VII. DBE SUBCONTRACTING – The contractor will subcontract with any DBE listed as having been used in the contractor's bid on the "Subcontractor Contact Information" sheet for at least the dollar amount listed in the proposal. Failure to do so provides the City with the right to declare a material breach, terminate the contract, and pursue its remedies, both legal and administrative. The DBE so denied also has a third party right of action against the Contractor alone for breach of contract, unless the substitution or variance has been approved by the City in writing as a contract modification. This provision in no way shall be interpreted as providing a third party right of action against the City.

ARTICLE VIII. COMPONENT PARTS OF THIS CONTRACT - This Contract consists of the following component parts, all of which are as fully a part of this Contract as if herein set out verbatim, or, if not attached, as if hereto attached.

- 1. This Instrument
- 2. Shop and Working Drawings submitted by the Contractor when approved by the Project Manager
- 3. Addenda (Nos. \_\_\_\_\_, and \_\_\_\_\_)
- 4. Special Provisions
- 5. Project Drawings and Specifications
- 6. Advertisement for Bids
- 7. Instruction to Bidders
- 8. Standard Drawings and Specifications
- 9. General Conditions
- 10. Contractor's Performance – Payment Bond
- 11. Contractor's Proposal

In the event that any provision in any of the foregoing component part of this Contract conflicts with any provision in any other of the component parts, the provision in the component part first enumerated shall govern over any other component part which follows in numerically, except as may be otherwise specifically stated.

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be executed in four (4) original counterparts the day and year first above written.

(SEAL) \_\_\_\_\_  
(Contractor)

By \_\_\_\_\_

ATTEST:  
\_\_\_\_\_

\_\_\_\_\_  
(Title)

(SEAL) \_\_\_\_\_  
City of Davenport, Iowa

By \_\_\_\_\_

ATTEST:  
\_\_\_\_\_  
(Title)

This Instrument approved by the City Council of the City of Davenport, Iowa, pursuant to resolution number \_\_\_\_\_ passed \_\_\_\_\_, 2002.

(Rev.3/02)

**COMBINED PERFORMANCE, PAYMENT  
AND  
MAINTENANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned,

\_\_\_\_\_  
As Principal, (hereinafter called "Contractor") and

\_\_\_\_\_  
As Surety, (hereinafter called "Surety") are held and firmly bound unto the City of Davenport, Iowa, as

Obligee, (hereinafter called "City"), in the amount of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$) \_\_\_\_\_ ) for the payment of which sum of money we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly, severally, and firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with City for \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Which contract is by reference made a part hereof, and is hereinafter referred to as "the Contract," and

WHEREAS, The Contractor is required to furnish a performance, payment, and maintenance bond in connection with said Contract pursuant to the terms and provisions as set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that:

1. If Contractor shall in all respects well and truly keep and perform the said contract on Contractor's part in accordance with the terms and provisions of all of the Contract documents comprising said contract, and in the time and manner therein prescribed; and
2. If the contractor shall pay all persons, firms or corporations having contracts directly with the Contractor, or with subcontractors, all just claims due them for labor performed, materials furnished, or transportation supplied in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the Contract price which the City is required to retain until completion of the Contract (but the Contractor and his Sureties shall not be liable to said persons, firms or corporations unless the claims of said claimants against said portion of the contract price have been established as provided by the laws of the State of Iowa); and,
3. If the contractor shall keep the following items of construction in good operating condition as intended by their original design and the contract documents:

\_\_\_\_\_  
For: \_\_\_\_\_ Years

\_\_\_\_\_  
For: \_\_\_\_\_ Years

Which become out of repair due to defects in workmanship or material; then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

- 4 To any extension of time beyond the contract completion date necessary for the Contractor to perform the Contract.
- 5 To any change in the plans, specifications or contract, when such change does not involve an increase of more than twenty percent of the total contract price, and shall then be released only to such excess increase.
- 6 To comply with all of the provisions of Chapter 573, Code of Iowa.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(CONTRACTOR) (SEAL)

\_\_\_\_\_  
(WITNESS)

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

Title: \_\_\_\_\_

\_\_\_\_\_  
(SURETY) (SEAL)

\_\_\_\_\_  
(WITNESS)

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

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(ADDRESS)

## SPECIAL PROVISIONS

### Nondiscrimination in Employment by Contractors/Subcontractors and Suppliers

#### Contractor's Agreement

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin or ancestry, age, marital status, physical or mental disability, or political beliefs and affiliations. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, national origin or ancestry, age, marital status, physical or mental disability, or political beliefs and affiliations. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause."

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin or ancestry, age, marital status, physical or mental disability, or political beliefs and affiliations."

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Contractors' commitments under the Davenport Affirmative Action Plan, and shall post copies of the notice in conspicuous places available to employees and applicants for employment."

(4) The Contractor will comply with all provisions of the Davenport Affirmative Action Plan and procedures developed by the City's Compliance Officer in pursuit of that plan."

(5) The Contractor will furnish all information and reports required by the Davenport Affirmative Action Plan and procedures developed by the City's Compliance Officer in pursuit of that plan, and will permit access to his/her books and accounts by the contracting department and the Compliance Officer for purposes of investigation to ascertain compliance with the City's Affirmative Action Plan."

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any implementing procedures or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further City contracts in accordance with procedures authorized in The Davenport Affirmative Action Plan and such other sanctions may be imposed and remedies invoked as provided in the Davenport Affirmative Action Plan, or as otherwise provided by law."

(7) The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order in the amount of \$5,000 or more, so that such provisions will be binding upon each

subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the City of Davenport to enter into such litigation to protect the interests of the City of Davenport."