LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

PART 1 - LEGAL RELATIONS

1.01 MUNICIPAL REGULATIONS, STATE, AND FEDERAL LAWS AND REGULATIONS

A. The Contractor shall at all times observe and comply with all applicable Federal, State, County, or City laws, ordinances, orders, and regulations.

B. References in these specifications to particular chapters or sections of the Iowa Code shall be to those chapters or sections as they appear in the current version of the Iowa Code. In the event such chapters or sections of the Iowa Code are subsequently amended, the specifications shall be deemed to refer to those chapters or sections as amended.

1.02 GOVERNING LAW

The law of the State of Iowa shall govern this contract and all subcontracts for materials and services entered into by the Contractor.

1.03 PERMITS AND LICENSES

The Contractor shall procure all necessary permits for the construction of the work and for temporary excavations, obstructions, enclosures, and street openings arising from the construction and completion of the work described in the contract documents. The cost for all required Jurisdictional permits and licenses will be waived by the Jurisdiction. The Contractor shall be responsible for all violations of the law for any cause in connection with the construction of the work or caused by the obstruction of roads, streets, highways, or sidewalks, and shall give all requisite notices to the Jurisdiction or other public authorities in connection therewith.

1.04 PATENTS AND ROYALTIES

The Contractor shall defend, indemnify, and save the Jurisdiction harmless against all claims arising from alleged infringements of patents and royalties covering tools, machinery, processes, appliances, devices, or materials used in connection with the work. Unit prices provided in the proposal shall include payment of all necessary royalties or licenses.

1.05 USE AND OCCUPANCY PRIOR TO COMPLETION OF CONTRACT

The Contractor shall complete any portion or portions of the work in such order and at such time as the Engineer may require. The Jurisdiction shall have the right to use any completed or partially completed portions of the work at any time, but such possession and use shall not be deemed an acceptance of the work so used or any part thereof. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to such extra compensation or extension of time, or both, as the Engineer may determine appropriate. When improvements are released to the Jurisdiction for public use prior to final approval and acceptance, the Contractor will be relieved of the responsibility for damages due to the elements or due to ordinary public use, but only the released and used portion of the improvements. Such release by the Contractor to the Jurisdiction for public use shall be directed in writing by the Engineer.

1.06 CONTRACTOR'S RESPONSIBILITY FOR THE WORK

A. Until the work is accepted by the Jurisdiction, it shall be in the custody of and under the charge, care, and control of the Contractor, who shall take every precaution against damage to the work by action of the elements or any other cause. The Contractor shall rebuild, repair, restore, and make good at its own expense, all damages to any portion of the work before acceptance thereof by the Jurisdiction. Issuance of any estimate or partial payment for work done will not be considered as final acceptance of any work completed.

1.06 CONTRACTOR'S RESPONSIBILITY FOR THE WORK (Continued)

B. If the Contractor completes a unit or portion of the work, the Jurisdiction may at its discretion accept such work and the Contractor may be relieved of further responsibility for such unit or portion of the work. Such partial acceptance shall not void or alter any of the terms of the contract, nor shall it constitute final acceptance of the work as provided in Section 1090, 1.08 - Acceptance and Final Payment.

1.07 RESPONSIBILITY FOR DAMAGE CLAIMS

The parties agree that it is their intent that there be no third-party beneficiaries to this contract. No provision of this contract or of any addendum, materials instructional memorandums, plans, proposal, special provision, developmental specification, supplemental specification, or general supplemental specification shall be construed as creating any third-party beneficiaries.

1.08 PERSONAL LIABILITY OF PUBLIC OFFICIALS

Neither the Engineer nor the Engineer's authorized representatives, agents, or assistants shall have any liability, either personally or as officials of the Jurisdiction, in carrying out any of the provisions of the Contract or in exercising any power or authority granted to them thereby. It being understood that in such matters they will act as the agents and representatives of the Jurisdiction.

1.09 WAIVER OF LEGAL RIGHTS

A. The Jurisdiction shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and the materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or from showing that the work or materials do not in fact conform to the contract documents.

B. The Jurisdiction shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its surety such damages as it may sustain, and all outlay and expense it incurs, by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Jurisdiction nor any of its representatives, nor any payment for acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Jurisdiction, shall operate as a waiver of any portion of the contract, or any powers herein reserved, or any right to damages herein provided. A waiver of any breach of the contract shall not be held to be a waiver of any other subsequent breach.

C. The Contractor hereby waives any claims it may hereafter be entitled to assert against the Jurisdiction, its officers, agents, employees, or consultants, on its behalf or on behalf of its employees, agents, subcontractors, sub-subcontractors, and suppliers, for loss of or damage to personal property, tools, or equipment owned by it or its employees, agents, subcontractors, sub-subcontractors, and suppliers, which loss or damage is sustained on the Jurisdiction's project property, or which occurs during work on the project, and the Contractor agrees to assume liability or responsibility for such claims and to procure insurance to cover its exposure in that regard.

1.10 ACCEPTANCE BY THE JURISDICTION - NOT A WAIVER OF CONTRACTOR'S OBLIGATIONS OR A WAIVER OF THE JURISDICTION'S RIGHTS

A. In various provisions of the contract documents, including these specifications, the Jurisdiction has reserved to itself or the Engineer the authority to test or inspect materials, equipment, or manufactured assemblies and to accept or reject those and other elements of the work.

1.10 ACCEPTANCE BY THE JURISDICTION - NOT A WAIVER OF CONTRACTOR'S OBLIGATIONS OR A WAIVER OF THE JURISDICTION'S RIGHTS (Continued)

B. In various provisions of the contract documents, including these specifications, the Jurisdiction has reserved to itself or the Engineer the authority to require the Contractor's preparation of shop drawings for review and to accept or reject same. If unanticipated and either unusual or complex construction procedures or site conditions occur, the Engineer may require the Contractor to submit such shop drawings as, in the judgment of the Engineer, are necessary to satisfactorily complete the proposed construction.

C. Acceptance or approval by the Engineer as therein provided shall not operate to relieve the Contractor of its obligation (1) to perform the work as required by the contract documents in a workmanlike manner and according to the standards for construction applicable to the type of work covered by this contract generally observed by contractors in this locale and (2) to provide materials and equipment meeting the quality requirements as provided in the contract documents. The Jurisdiction assumes no responsibility for errors in shop drawings and assumes the Contractor will use material complying with requirements of the contract documents or, where not specified, those of sound and reasonable quality, and will erect the subjects of such shop drawings according to recognized standards of first quality work or, when specified, according to standards of the contract documents.

D. No such acceptance by the Jurisdiction shall constitute a waiver by the Jurisdiction of its right to subsequently reject defective work, materials, or equipment. Further, no such acceptance by the Jurisdiction or the Engineer shall be deemed a waiver by the Jurisdiction of its right to recover from the Contractor all losses, damages, outlay, or expense it incurs, which is attributable to such defective work, materials or equipment, or manufactured assemblies, nor shall such acceptance or approval be deemed a waiver of the Jurisdiction's right to indemnity from the Contractor for damage or injury to third parties occasioned by such defective work, materials, or equipment.

1.11 BUSINESS ORGANIZATION REQUIREMENTS

The bidder, or contractor, as a business organization shall comply with the following:

A. A corporation, limited liability company, limited partnership, or other type of business organization governed under Iowa statutes must be registered with the Iowa Secretary of State, must use the name under which it is registered with the Iowa Secretary of State, must be authorized to do business in Iowa, and must be registered as a contractor with the Iowa Department of Labor.

B. A partnership, sole proprietorship, company operating under a trade name, or other type of business organization not governed under Iowa statutes should be registered in the Office of the County Recorder where it is located or where the work is to be performed, must use the name under which it is registered, and must be registered as a contractor with the Iowa Department of Labor. Prior to entering into contract, the designated low bidder, if it is not required to be registered with the Iowa Secretary of State, shall provide to the Jurisdiction the name and address of its registered agent or lawful representative upon whom legal notices and processes may be served. The registered agent or lawful representative must be an Iowa resident, an Iowa profit or nonprofit corporation, or a foreign profit or nonprofit corporation qualified to do business in Iowa.

C. A foreign business organization, organized under the laws of a state other than Iowa, shall file with the Engineer’s documentation that it has complied with all the provisions of this section prior to entering into a contract.

1.11 BUSINESS ORGANIZATION REQUIREMENTS (Continued)

D. If a bid is proposed to be submitted by two persons or entities as a joint venture, the names of the two persons or entities appearing on the documents must be followed by the notation – "a joint venture." In that instance, the bid must also be signed by authorized agents of both entities, and the bid security must indicate that it "applies to and covers the proposal for construction of (Project Name) submitted by the (principal on bond) and (name of other company), submitted as a joint venture proposal." A bid submitted by two persons or entities without any indication they are submitting it as a joint venture, without being signed by authorized representatives of both entities, and without bid security covering both entities as a joint venture, will be rejected.

1.12 CONSENT TO JURISDICTION OF IOWA DISTRICT COURT OR FEDERAL DISTRICT COURT IN IOWA

The Contractor agrees that any causes of action that accrue to it, or which by subrogation or assignment accrue to its sureties or insurers, arising out of or connected with this contract shall be brought in the Iowa District Court in and for the County where the Jurisdiction is located or in the United States District Court in and for the District where the Jurisdiction is located. Contractor further consents, on behalf of itself and its subrogees and assigns, to the jurisdiction of either the Iowa District Court in and for the County where the Jurisdiction is located or the United States District Court in and for the District where the Jurisdiction is located, as to any causes of action brought against it arising out of this contract or any work performed under it by Contractor or its subcontractors, and further agrees, on behalf of itself, its subrogees and assigns, to waive any and all objections to the jurisdiction of said court as to any such cause of action.

1.13 SEVERABILITY

It is the intent of the Jurisdiction and the Contractor that the lawful provisions of this contract shall be severable from any provisions of this contract that are hereafter declared to be illegal or void by a court of competent jurisdiction.

PART 2 - RESPONSIBILITIES TO THE PUBLIC

2.01 SANITATION

The Contractor shall arrange for the necessary sanitary conveniences, properly secluded, for the workers on the project. These shall be maintained in a manner inoffensive to the public and in compliance with the local health regulations.

2.02 CONVENIENCE AND SAFETY

A. Use of Streets: The Contractor is granted the privilege of using Jurisdictional roads, streets, or highways, as shown on the plans, for the purpose of doing work specified in the contract, but is not granted exclusive use of such roads, streets, or highways.

B. Protection of Workers and the Public: The Contractor shall erect and maintain good and sufficient guards, barricades, and signals at or near the work according to the MUTCD and all applicable laws, regulations, and specifications. The Contractor shall, in all cases, maintain safe passageways at all road crossings, crosswalks, and street intersections and shall do all other things necessary to prevent an accident or loss of any kind.

After November 24, 2008, all personnel shall wear ANSI 107 Class 2 apparel at all times when exposed to traffic or construction equipment in the right-of-way.

C. Convenience and Access: The Contractor shall handle the work in a manner that will cause the least inconvenience and annoyance to the general public and to the property owners abutting the work area. The Contractor shall also provide access to the abutting property to the greatest extent practicable.

D. Worker Safety: The Contractor shall comply with all current and future federal and state OSHA requirements. Nothing in this contract or any action by the Jurisdiction shall be interpreted or construed as a waiver of OSHA requirements. It is the Contractor's obligation to follow OSHA requirements and standards at all times.

E. Project Area or Work Site Safety:

1. In accordance with Section 1070, 1.06, until the work is accepted by the Jurisdiction, the work shall be in the custody of and under the charge, care, and control of the Contractor. The Contractor is also responsible for the project area or work site. The Contractor is solely responsible for the safety of everyone on its work site.

2. The Contractor should have a safety program; however, the Contractor need not submit a safety program to the Jurisdiction, and the Jurisdiction will not review or approve the Contractor’s safety program. The Jurisdiction assumes that the Contractor will maintain a safe worksite; however, the Jurisdiction’s staff will not intrude in the Contractor’s responsibility for safety issues.

3. The Engineer may assign some or all of the duties and responsibilities of the Engineer to an authorized representative for a given project. Nothing contained in this section or in the contract documents shall be construed as requiring or permitting the Engineer to direct the means, methods, sequences, or procedures, including safety measures, of performing any work under the contract or contract documents, except to assure that the quality of work conforms to these specifications and other provisions of the contract documents and that the contract will be completed as scheduled.

2.02 CONVENIENCE AND SAFETY (Continued)

4. The Engineer may appoint an authorized representative on the work site to monitor the materials used and the work done by the Contractor. The Engineer's authorized representative is not a safety inspector and is not responsible for monitoring, directing, or otherwise ensuring the safety of the Contractor, its subcontractors, its suppliers, or any others that may be on the work site.

5. Construction of the work included in the contract is by its nature dangerous work; and the Contractor is hereby notified that it is the Contractor's sole responsibility to provide as safe a working site as possible given the nature of the work. It is the Contractor's responsibility to notify and advise its employees, subcontractors, suppliers, and everyone on the worksite of the dangers associated with the work, and provide them with appropriate safety information to protect them from those dangers.

2.03 WORK AREA

A. The Contractor shall confine its work to the Jurisdiction's premises, including construction easements and construction limit lines as shown in the contract documents and verified by the Engineer. The Contractor shall not enter upon or place materials on any private property for which the Jurisdiction has not obtained an easement for such use. The Contractor agrees to defend, indemnify, and hold the Jurisdiction harmless from all suits and actions of every kind and description resulting from the Contractor's use of private property. Before beginning construction, the Contractor shall check with the Engineer for any special instructions concerning easements.

B. Temporary buildings, storage sheds, shops and office, etc., may be erected by the Contractor only with the prior approval of the Engineer and shall be built with labor and materials furnished by the Contractor without expense to the Jurisdiction. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor, at its expense, after the completion of the work.

2.04 PROJECT AREA FOR THE WORK

A. Acquisition: Existing and proposed additional right-of-way or easements shown on the plans and/or in the contract documents will provide, without cost to the Contractor, adequate space for the performance of the work. If the contract documents do not contain a notice to the Contractor of non-acquired additional right of way or easements, as shown on the plans, and the Contractor provides documentation acceptable to the Engineer, compensation will be allowed for loss or damage occasioned by delays in securing said right-of-way or easements; and, if the need to acquire such additional right-of-way or easements is the sole and only cause of the impossibility of completing the work within the specified time, the Jurisdiction may grant an extension of time if requested by the Contractor. Before beginning construction, the Contractor shall obtain from the Engineer a list of any easements or right-of-way not acquired and any special instructions pertaining to properties affected by the work.

B. Location: Property lines, limits of easements, and limits of construction permits are indicated on the plans, and it shall be the Contractor's responsibility to confine its construction activities within those limits.

C. Use: The Contractor shall confine its equipment, storage of materials, and operation of work to the limits indicated by laws, ordinances, permits, or direction of the Engineer and shall not unreasonably encumber the premises with its materials. The Contractor shall comply with the Engineer's instructions regarding signs and advertisements.

D. Encroachments: Any damage resulting to persons or property from the Contractor's encroachment beyond the specified limits shall be the sole responsibility of the Contractor.

2.05 EXPLOSIVES

A. Use: The Contractor shall not blast any rock or other materials or allow the same to be done in prosecution of the work, unless it secures the Engineer's approval, proper insurance coverages, and a blasting permit when required.

B. Safety: The Contractor is solely responsible for all damage resulting from blasting operations performed by the Contractor or its agents. The Contractor shall use the utmost care to not endanger life or damage property; and whenever ordered by the Engineer, the number and size of the charges shall be reduced. Suitable coverages or mats shall be provided to confine all materials lifted by blasting within the limits of the excavation or trench. All explosives shall be stored in a secure manner and clearly marked according to all applicable laws and regulations.

C. Regulations: The Contractor shall abide by all existing Federal, State, and Local regulations regarding the use of explosives, including, but not limited to, Uniform Fire Code, Article 77, and National Fire Protection Association 495, Explosive Materials Code of the National Fire Codes.

2.06 TRAFFIC CONTROL

A. General:

1. The Contractor shall maintain traffic and shall provide and maintain traffic control devices according to the contract documents. If there is no specific traffic control plan, then the Contractor's traffic control devices shall meet the requirements of and be placed according to the current edition of MUTCD.

2. During construction, areas to be maintained for traffic shall be kept clear of all hazardous materials, including but not limited to construction debris, dust, and mud.

B. Closing Streets to Traffic:

1. Upon the Engineer's approval, the Contractor may close streets or parts of streets to vehicular traffic as soon as the construction work is started; such streets or parts of streets shall remain closed as long as construction work or condition of the finished work requires. The Engineer will determine how many streets or parts of streets may be closed by the Contractor at one time, and may refuse to allow the closing of additional streets until some of the improvement is finished and opened to traffic.

2. The Contractor shall notify the Engineer 48 hours in advance (excluding weekends) of closing any roads, streets, or public thoroughfares. No road or street shall be closed without prior approval from the Engineer.

3. The Contractor shall not remove, relocate, or reset any permanent Jurisdictional traffic control devices unless authorized to do so by the Engineer or contract documents. If a sign must be removed or relocated for any phase of construction, the Contractor shall notify the Engineer of the necessity for removal. The Engineer shall arrange for the removal, relocation, or resetting of permanent traffic control devices by Jurisdictional personnel as needed to allow the work to proceed. If Jurisdictional personnel are not available, the authorized Jurisdictional representative may give authorization to the Contractor to remove, relocate, or reset the permanent traffic control devices.

4. In the event the Contractor removes or relocates a traffic control sign without prior notice to or authorization from the Engineer, the Contractor shall bear all responsibility and liability to any person sustaining bodily injury or property damage on account thereof.

2.07 PROTECTION OF ABOVEGROUND AND UNDERGROUND FACILITIES

A. The Engineer has attempted to show on the plans all aboveground and underground facilities, including public and private utilities, which may be affected by the work. The location, depth, and size of each such facility shown on the plans is approximate only and is not guaranteed. Other underground facilities may exist and their location may not be presently known or identified. It is the Contractor's responsibility to determine the existence and exact location of all such facilities located within the construction area to avoid damage.

B. Where existing facilities are shown in the contract documents or encountered within the construction area, it shall be the responsibility of the Contractor to notify the operators of those facilities prior to beginning any construction activities. The Contractor shall allow access to those facilities for necessary modification of services. The Contractor shall support, sustain, and protect existing pipes, conduits, poles, wires, and other apparatus located under, over, along, across, or adjacent to the work site. If such utilities are damaged through Contractor's negligence, they will be repaired by the agencies having control of same, but the cost of such repairs shall be paid by the Contractor.

C. The Contractor shall, prior to commencing any excavation or other operation that may affect underground facilities, notify the "Iowa One Call" underground facility locate system, established pursuant to Iowa Code Chapter 480. The Contractor shall, if requested by the operator of an underground facility, assist in the location of its facilities; provided, however, the Jurisdiction shall not be responsible to the Contractor or to any operator of an underground facility for the cost of locating such facility, or for any damage to such facility that occurs in attempting to locate it, or for any damage to the facility occasioned by the Contractor's performance of work under the contract.

D. Claims for additional compensation will not be allowed to the Contractor for any interference, delay, or additional work occasioned by the location or adjustment of aboveground or underground facilities, or connections thereto.

2.08 PROTECTION OF PROPERTY

A. The Contractor shall continuously maintain adequate protection of all its work from damage and shall protect the Jurisdiction's property and adjacent private property from injury or loss arising in connection with the work. The Contractor shall repair or restore any such damage, injury, or loss to Jurisdiction property or adjacent private property.

B. Protect existing facilities, trees, and shrubs to remain in place. Any damage to existing trees or shrubs, branches, and root systems to remain and to be protected shall be repaired and/or pruned by an experienced tree surgeon or arborist. Do not disturb soil within 10 feet of the drip line of trees without notifying the Engineer. The Contractor shall mark the 10 foot limit from the drip line.

2.09 LAND MONUMENTS

A. The Contractor will be required to preserve all center stones, land monuments, or other property marks the Contractor may find in prosecuting the work. The Contractor shall notify the Engineer of the finding of any land monuments and shall not remove or disturb same until permission is given to do so, at which time the Contractor shall properly remove said landmarks under the direction of the Engineer.

B. For every land monument lost or destroyed by the Contractor, the Contractor may be charged, and such amount shall be deducted from any monies due or may become due to the Contractor under the contract.

2.10 DUST CONTROL

During construction operations, the Contractor shall be responsible for the control of dust to a degree compatible with the area in which the construction is being performed and with existing environmental regulations. In the event the Contractor does not control dust as specified, the Jurisdiction reserves the right to order dust control to be performed by other forces and withhold the cost thereof from any monies due or may become due to the Contractor under the contract.

2.11 ENVIRONMENTAL AND HISTORIC ITEMS

If contaminated soils, historical artifacts, or other environmental or historic items are encountered, stop work and notify the Engineer.

2.12 RAILROAD CROSSINGS

The authority for performing work beneath, at grade, or over railroad tracks will have been previously secured by the Jurisdiction. It shall be the Contractor's responsibility to contact the railroad company officials prior to beginning the work on railroad property or easements. The Contractor shall perform the work without damage to the facilities and property of the railroad or its lessees, and in strict observance of requirements for the safety of the railroad property and operations. All such work will be subject to the inspection of the railroad's representative. The Contractor shall protect, indemnify, and hold the Jurisdiction harmless from any and all damages resulting from its operations on railroad property or easements or in the construction of railroad crossings according to Section 1070, Part 3 - Bonds and Insurance.

2.13 BORROW AND WASTE SITES

A. Unless borrow or waste sites are designated on the plans or specified in the special provisions, the Contractor shall secure and operate such sites at its own expense.

B. In all cases, borrow and waste sites shall be operated in such a manner as to meet Federal, State, and local safety, environmental, and health requirements. Site operations, or the result of such operation, that create a definite nuisance or result in damage to public or private property will not be permitted. In all cases, sites shall be approved by the Engineer before use.

2.14 MAINTAINING POSTAL SERVICE

A. It shall be the Contractor's responsibility to contact the U.S. Postal Service to ascertain its requirements for the maintenance of postal service to residents or businesses in the vicinity of the work site according to the instructions of the Postal Service. The Contractor shall be responsible for mailboxes at temporary locations designated by the Postal Service, and at the completion of the work, the Contractor shall replace all mailboxes in locations and conditions satisfactory to the Postal Service.

B. Not less than 24 hours prior to removing any mailbox, the Contractor shall notify each affected resident or business addressee in writing advising them of the move and the location of their temporary mailbox during construction.

C. For each residential or business address affected by the work, the Contractor shall place a temporary mailbox at a location approved by the Postal Service. Temporary mailboxes shall be in place so postal service is maintained at all times. Any permanent mailbox that must be removed shall be stored on the property from which it is removed and at a sufficient distance from the work area to ensure it will not be damaged by construction activities.

2.15 FINISHING AND CLEANUP REQUIREMENTS

From time to time, as may be ordered by the Engineer, and immediately after completion of the improvement, the Contractor shall, at its expense, cleanup and remove all refuse and unused materials of any kind resulting from the work. Upon failure to do so within three working days after such request by the Engineer, the work may be done by the Jurisdiction and the cost thereof charged to the Contractor and deducted from its final payment. Upon completion of the work, the Contractor shall remove all its equipment and put the area of the work in a neat and clean condition and do all other cleaning necessary to complete the work in a workmanlike manner satisfactory to the Engineer.

PART 3 - BONDS AND INSURANCE

3.01 PERFORMANCE, PAYMENT, AND MAINTENANCE BOND

A. The lowest responsive, responsible bidder shall be required to file, before the contract is awarded, a surety bond for performance, payment, and/or maintenance on a form provided by the Jurisdiction and in penal sum equal to the total bid amount. Said bond shall be executed by a corporation authorized to contract as a surety in the state of Iowa. Said bond shall be filed in the specified number of copies as a part of the executed contract documents for the Jurisdiction's approval and award.

B. Said bond shall provide that the Contractor shall well and satisfactorily perform and execute the work in all respects, according to the contract documents therefore, and according to the time and conditions of the contract documents, and also that the Contractor shall pay all debts incurred by it in the prosecution of such work, including those for labor and materials furnished. Said bond may also provide for the maintenance of the improvement for the number of years stipulated in the contract documents, and shall remain in full force for the entire maintenance period. Said bond shall in all cases comply with the laws of the State of Iowa and shall be subject to the approval of the Jurisdiction.

C. Within the time period specified in the maintenance portion of the bond, the Contractor shall, as and when ordered by the Engineer, repair, replace, or rebuild such portions of the work found to be faulty because of materials or workmanship. After being notified of the need for repairs, the Contractor shall submit, within seven calendar days, a written report stating its intentions and schedule for completing the repairs for approval by the Engineer. If the Contractor fails to submit such written report or to make the repairs as approved by the Engineer, the Jurisdiction shall have the right to make such repairs and to collect from the Contractor or its surety all outlay and expense the Jurisdiction incurs in making the repair, and in attempting to enforce the terms of the contract and the bond against the Contractor and its surety. Persistent failure by the Contractor to make such repairs may constitute grounds for disqualification of the Contractor from bidding on future projects.

3.02 INSURANCE REQUIREMENTS

A. The Contractor shall purchase and maintain insurance to protect the Contractor and the Jurisdiction against all hazards herein enumerated throughout the duration of the contract. Said insurance shall be provided by an insurance company or companies, “admitted” or “non-admitted” to do business in the State of Iowa, having an A.M. Best rating of no less than “B+.”

B. "Insurance," "insurance policy," or "insurance contract" when used in these specifications shall have the same meaning as "insurance policy" and "insurance contract" under Iowa Code Section 507B.2. All insurance required by this section shall provide coverage on an occurrence basis, not on a claims-made basis, and the person or other entity shall provide evidence of such coverage through an "insurance policy," "contract of insurance," or "certificate of insurance" that clearly discloses on its face coverage on an occurrence basis. Insurance coverage required for hazardous materials abatement including removal of lead, asbestos, PCB's, or the like may be provided on a claims-made basis when it is demonstrated to the satisfaction of the Jurisdiction that occurrence coverage is not reasonably available.

C. Except for workers compensation insurance, the Contractor shall purchase and maintain such insurance as will protect the Contractor and the Jurisdiction as set forth below, which may arise out of or result from the Contractor’s operations under the contract, whether such operations be by the Contractor, its subcontractors or consultants, suppliers, third parties, or the agents, officers, or employees of any of them. In addition, the Contractor shall purchase and maintain workers compensation insurance to cover its employees.

3.02 INSURANCE REQUIREMENTS (Continued)

1. Workers Compensation: A standard Workers Compensation policy approved for use in the State of Iowa shall be issued with the following coverages.
   a. Statutory Benefits covering all employees injured on the job by accident or disease as prescribed by Iowa Code Chapter 85.
   b. Employers Liability insurance with the following limits:

Bodily injury by accident	$500,000 each accident
Bodily injury by disease	$500,000 each accident
Bodily injury by disease	$500,000 policy limit

2. Commercial General Liability Insurance: No less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001 or its equivalent) with all standard exclusions with minimum limits shown below covering claims for damages because of bodily injury, personal injury, or damage to property that occur on the premises under contract or arise out of the operations in performance of the contract. Any additional exclusions shall be identified on the Certificate of Insurance and shall be subject to the review and approval of the Jurisdiction.

General Aggregate Limit	$2,000,000
Products' Completed Operations Aggregate Limit	$2,000,000
Personal and Advertising Injury Limit	$1,000,000
Each Occurrence Limit	$1,000,000
Fire Damage Limit (any one fire)	$50,000
Medical Damage Limit (any one person)	$5,000

   This insurance must include the following features:
   a. Coverage for all premises and operations. The policy shall be endorsed to provide the Designated Construction Project(s) General Aggregate Limit Endorsement (ISO CG 2503 or its equivalent).
   b. Personal and advertising injury.
   c. Operations by independent contractors.
   d. Contractual liability coverage. If work to be performed by Contractor includes construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass, or crossing, then such policy will include a Railroad's Contractual Liability Endorsement (ISO CG 2417 or its equivalent).
   e. Coverage for demolition of any building or structure, collapse, explosion, blasting, excavation, and damage to property below the surface of the ground (XCU coverage).
   f. Any fellow employee exclusions shall be deleted as it applies to managerial and supervisory employees.
   g. The policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations.
   h. Products and completed operations shall be maintained for the duration of the work; and shall be further maintained for a minimum period of time after final acceptance and payment if required in the Special Provisions.
   i. Contractual liability coverage will also include contractually assumed defense costs in addition to policy limits.
   j. In lieu of including the Jurisdiction as an additional insured on the Contractor's Commercial General Liability Insurance, the Jurisdiction, at its option, may require the Contractor to provide an Owner's Protective Liability Policy by Special Provision, or may allow the Contractor to provide an Owner's Protective Liability Policy by Change Order. If an Owner's Protective Liability Policy is provided, the minimum coverage, limits, and exclusions shall be as shown above; and the Contractor's premium cost of obtaining such insurance shall be considered incidental to the work and shall not be subject to reimbursement by the Jurisdiction.

3.02 INSURANCE REQUIREMENTS (Continued)

3. Automobile Liability Insurance: Covers all owned, non-owned, hired, and leased vehicles with a minimum combined single limit of $1,000,000 per accident covering claims for damages because of bodily injury, personal injury, or damage to property that arise out of operations in performance of the contract. The insurance must include contractual liability coverage. Any fellow employee exclusion shall be deleted. The policy shall provide Auto Cargo Pollution Endorsement (ISO CA 99 48 or its equivalent), if required in the special provisions.

4. Railroad Protective Liability: If required by the Jurisdiction by special provision, or by an affected railroad, the Contractor shall procure and maintain Railroad Protective Liability Insurance naming the railroad as the insured with minimum limit for bodily injury and property damage liability of $2,000,000 per occurrence, $6,000,000 aggregate, or with such other limits as the railroad shall require. The original of said policy shall be furnished to the railroad and a certified copy of said policy shall be furnished to the Jurisdiction prior to any construction or entry upon the railroad easement premises by the Contractor.

5. Umbrella/Excess Insurance: At the Contractor's option, the limits specified in Section 1070, 3.02, C, 1, 2, 3 may be satisfied with a combination of primary and Umbrella/Excess Insurance. At the Jurisdiction's option, the minimum insurance limits specified above may be increased by special provision. This increase may be satisfied with a combination of primary and Umbrella/Excess Insurance.

6. Additional Insured Endorsements: Except for Workers Compensation, the insurance specified shall:
   a. Include the Jurisdiction as an additional insured, per Section 1070, 3.06, B; and
   b. Be primary to and not in excess of or contributory with any other insurance available to the Jurisdiction.

7. Reference to ISO: Wherever the term "ISO" appears in these specifications, any subsequent equivalent ISO form or non-ISO equivalent form may be used.

3.03 CONTRACTOR'S INDEMNITY - CONTRACTUAL LIABILITY INSURANCE

A. To the extent covered by the standard insurance forms listed in Section 1070, 3.02, the insurance shall include contractual liability insurance to cover all indemnification and hold harmless agreements and provisions in the contract documents, including the following provision.

B. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Jurisdiction and its officers, agents, employees, and consultants from and against all claims, damages, losses, and expenses, including but not limited to, attorney's fees, arising out of or resulting from the performance or prosecution of the work by the Contractor, its subcontractors, agents, or employees; or arising from any neglect, default, or mismanagement or omissions by the Contractor, its subcontractors or consultants, suppliers, third parties, or the agents, officers, or employees of any of them in the performance of any duties imposed by the contract or by law; provided 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 the work itself) including economic damages and the loss of use resulting therefrom, and

3.03 CONTRACTOR'S INDEMNITY - CONTRACTUAL LIABILITY INSURANCE (Continued)

2. is caused in whole or in part by any act or omission of the Contractor, its subcontractors or consultants, suppliers, third parties, or the agents, officers, or employees of any of them, or anyone for whose acts any of them may be liable, regardless 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 that would otherwise exist as to any party or person described in this subsection.

C. In any and all claims against the Jurisdiction or the Engineer or any of their agents, officers, employees, or consultants by any employee of the Contractor, its subcontractors or consultants, suppliers, third parties, or the agents, officers, or employees of any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this subsection 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' compensation acts, disability benefit acts, or other employee benefit acts.

D. The obligations of the Contractor under this subsection shall not extend to the liability of the Engineer, the Engineer's agents, employees, or consultants, arising out of:

   1. the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, design standards, or specifications; or

   2. the giving of or the failure to give directions or instructions by the Engineer, the Engineer's agents, employees, or consultants.

   provided the preparation or the giving or failure to give directions or instructions is the sole proximate cause of the injury or damage.

E. If any litigation on account of such claims shall be commenced against the Jurisdiction, the Contractor, upon notice thereof from the Jurisdiction, shall defend the same at its sole cost and expense; and the record of any judgment rendered against the Jurisdiction on account of such claims for damages shall be conclusive as against said Contractor and entitle the Jurisdiction to recover the full amount thereof, with interest and cost, and attorney's fees incurred by said Jurisdiction, whether the Jurisdiction paid such amounts or not.

3.04 CONTRACTOR'S INSURANCE FOR OTHER LOSSES; WAIVER OF SUBROGATION

A. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned by the mechanics; or any tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, its subcontractors or consultants, suppliers, third parties, or the agents, officers, or employees of any of them; or to any shed or other temporary structures, scaffolding and stagings, protective fences, and bridges belonging to the contractor, its subcontractors or consultants, suppliers, third parties, or the agents, officers, or employees of any of them, not covered by the Jurisdiction’s Builders Risk Insurance.

B. Contractor shall cause each of its subcontractors, consultants, suppliers, third parties, or the agents of any of them, to carry insurance sufficient to cover all loss to such materials, tools, motor vehicles, and equipment. All insurance carried by the Contractor, or its subcontractors, consultants, suppliers, third parties or the agents of any of them, covering risk of loss or damage to materials, tools, motor vehicles, and equipment used in the performance of the Work, shall provide a waiver of subrogation against the Jurisdiction. To the extent that any subcontractors, consultants, suppliers, third parties or the agents of any of them, do not provide such coverages, any uninsured loss shall be the sole responsibility of the Contractor.

3.05 PROPERTY INSURANCE

A. Unless otherwise provided, the Jurisdiction shall purchase and maintain property insurance, a.k.a. Builder's Risk Insurance, on building construction projects, or other projects by special provisions, in the amount of the initial bid amount, or in an amount equal to the estimated value of actual building construction, whichever is less, as well as applicable modifications thereto for the entire work at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the contract documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final acceptance of the work by the Jurisdiction. The insurance shall include interests of the Jurisdiction, the Contractor, subcontractors, and sub-subcontractors in the work. This property insurance covering the work will have a deductible of $5,000 for each occurrence, which will be the responsibility of the Contractor.

B. Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, flood and earthquake, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Jurisdiction's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the contract documents.

C. Unless otherwise provided in the contract documents, this property insurance shall cover portions of the work stored off the site, after written approval of the Jurisdiction, at the value established in the approval, and portions of the work in transit. Coverage for work stored off the site and in transit will be not less than 10% of the policy amount.

D. Boiler and Machinery Insurance: The Jurisdiction, at the Jurisdiction's option, may purchase and maintain Boiler and Machinery Insurance required by the contract documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Jurisdiction; this insurance shall include interest of the Jurisdiction, Contractor, subcontractors, and sub-subcontractors in the work, and the Jurisdiction and Contractor shall be named insureds.

E. Loss of Use Insurance: The Jurisdiction, at the Jurisdiction's option, may purchase and maintain insurance to insure the Jurisdiction against loss of use of the Jurisdiction's property due to fire or other hazards, however caused. In the event the Jurisdiction purchases such insurance, the Jurisdiction shall waive all rights of action against the Contractor for loss of use of the Jurisdiction's property, including consequential losses due to fire or other hazards, however caused.

F. If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Jurisdiction shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate change order.

G. If during the project construction period, the Jurisdiction insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the project or if after final acceptance, property insurance is to be provided on the completed project through a policy or policies other than those insuring the project during the construction period, the Jurisdiction shall waive all rights according to the terms of Section 1070, 3.05, I, for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

3.05 PROPERTY INSURANCE (Continued)

H. Before an exposure to loss may occur, the Jurisdiction shall file with the Contractor a copy of each policy that includes insurance coverages required by this section. Each policy shall contain all generally applicable conditions, definitions, exclusions, and endorsements related to this project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 calendar days prior written notice has been given to the Contractor.

I. Waivers of Subrogation: The Jurisdiction and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Jurisdiction's consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the work, except such rights as they have to proceeds of such insurance held by the Jurisdiction as fiduciary. The Jurisdiction or Contractor, as appropriate, shall require of the Jurisdiction's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

J. A loss insured under the Jurisdiction's property insurance shall be adjusted by the Jurisdiction as fiduciary and made payable to the Jurisdiction as fiduciary for the insureds, as their interest may appear, subject to requirements of any applicable mortgagee clause and of Section 1070, 3.05, K. The Contractor shall pay subcontractors their shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to make payments to their sub-subcontractors in a similar manner.

K. The Jurisdiction as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five calendar days after occurrence of loss to the Jurisdiction's exercise of this power; if such objection be made, arbitrators shall be chosen according to Section 1040, 1.10, D, provided one arbitrator shall be appointed by the Jurisdiction, one by the party in interest making objection, and the third to be appointed by the two arbitrators thus chosen. Arbitration shall thereafter proceed as provided in Section 1040, 1.10, E through G. The Jurisdiction as fiduciary shall, in that case, make settlement with insurers according to the direction of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

L. Partial occupancy or use of the work shall not commence until the insurance company or companies provided property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Jurisdiction and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

M. Installation Floater: Under contracts where the Jurisdiction does not provide Builders Risk Insurance, the Jurisdiction may by special provision require the Contractor to provide coverage under an “Installation Floater” covering all materials, fixtures, equipment, and supplies provided for the job. Such insurance shall be on an “*all risk*” form in an amount equal to the maximum value of such materials, equipment, or supplies covered on the job site, off-premises at any temporary storage location, or in transit. The Installation Floater covering the equipment shall have a maximum deductible no greater than $5,000 for each occurrence, which will be the responsibility of the Contractor.

3.06 ENDORSEMENT NAMING JURISDICTION AS AN ADDITIONAL INSURED / CANCELLATION AND MATERIAL CHANGE / GOVERNMENTAL IMMUNITIES ENDORSEMENT

A. All liability insurance policies the Contractor is required to provide pursuant to this Section 1070, Part 3 - Bonds and Insurance shall be by endorsement name and designate the Jurisdiction as an additional insured.

B. The Additional Insured Endorsement shall include the following provisions:

The Jurisdiction, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, and all its officers, agents, and consultants, are named as Additional Insureds with respect to liability arising out of the Contractor's work and services performed for the Jurisdiction. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage by primary, contributing, or excess.

The Additional Insured Endorsement shall be included on all Commercial General Liability, Automobile Liability, and Umbrella/Excess Insurance policies.

C. The Cancellation and Material Change Endorsement shall include the following provisions:

Thirty calendar days advance written Notice of Cancellation, Non-Renewal or Reduction in Insurance coverage and/or Limits, and 10 calendar days written Notice of Non-payment of Premium, shall be sent to the Jurisdiction at the office and attention of the Certificate Holder. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

This Cancellation and Material Change Endorsement shall be included on insurance policies required by the Urban Standard Specifications for Public Improvements.

D. All liability polices that include the Jurisdiction as an additional insured shall include a Governmental Immunities Endorsement, pursuant to Iowa Code Section 670.4, which endorsement shall include the following provisions:

1. Nonwaiver of Government Immunity: The insurance carrier expressly agrees and states the purchase of this policy and including the Jurisdiction as an Additional Insured does not waive any of the defenses of governmental immunity available to the Jurisdiction under Iowa Code Section 670.4 as it now exists and as it may be amended from time to time.

2. Claims Coverage: The insurance carrier further agrees this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under Iowa Code Section 670.4 as it now exists and as it may be amended from time to time.

3. Assertion of Government Immunity: The Jurisdiction shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the Jurisdiction.

4. Non-Denial of Coverage: The insurance carrier shall not deny coverage or deny any of the rights and benefits accruing to the Jurisdiction under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the Jurisdiction.

3.06 ENDORSEMENT NAMING JURISDICTION AS AN ADDITIONAL INSURED / CANCELLATION AND MATERIAL CHANGE / GOVERNMENTAL IMMUNITIES ENDORSEMENT (Continued)

5. No Other Change in Policy: The insurance carrier and the Jurisdiction agree the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

This Government Immunities Endorsement shall be included on all insurance policies that include the Jurisdiction as Additional Insured.

E. All liability policies purchased in the Jurisdiction's name shall include a Governmental Immunities Endorsement, pursuant to Iowa Code Section 670.4, which endorsement shall include the following provisions:

1. Nonwaiver of Government Immunity: The insurance carrier expressly agrees and states the purchase of this policy does not waive any of the defenses of governmental immunity available to the Jurisdiction under Iowa Code Section 670.4 as it now exists and as it may be amended from time to time.

2. Claims Coverage: The insurance carrier further agrees this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under Iowa Code Section 670.4 as it now exists and as it may be amended from time to time.

3. Assertion of Government Immunity: The Jurisdiction shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the Jurisdiction.

4. Non-Denial of Coverage: The insurance carrier shall not deny coverage or deny any of the rights and benefits accruing to the Jurisdiction under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the Jurisdiction.

5. No Other Change in Policy: The insurance carrier and the Jurisdiction agrees that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under this policy.

This Government Immunities Endorsement shall be included in all Insurance Policies in the Jurisdiction's name.

3.07 PROOF OF INSURANCE

A. The Contractor shall, prior to the Jurisdiction's approval and execution of the Contract, provide to the Jurisdiction a certificate or certificates of insurance evidencing all required insurance coverages as required in this Section 1070, Part 3 – Bonds and Insurance, utilizing the ACORD certificate form, or equivalent, required by the Jurisdiction. The Certificate of Insurance requirement may be satisfied with a blanket certificate.

B. The Description of Operations on the Certificate of Insurance for the work must state either: 1) Blanket certificate of coverage of all work, services, or projects with the Jurisdiction, or 2) Identify the specific project by name and project number. The Contract will not be submitted for approval execution by the Jurisdiction until all certificates of insurance are correct and have received staff approval.

C. The Cancellation statement on the Certificate of Insurance shall be superseded by the Cancellation and Material Changes Endorsement, which shall be attached to the certificate.

3.07 PROOF OF INSURANCE (Continued)

D. All endorsements required for the work shall be attached to the appropriate Certificate or Certificates of Insurance and shall be, on the face thereof, listed by name.

E. If an Owner's Protective Policy is provided, the policy with appropriate endorsements shall be submitted to the Jurisdiction. The Contract will not be submitted for approval and execution by the Jurisdiction until the Owner's Protective Policy and all certificates of insurance are correct and have received staff approval.

3.08 NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE

A. Upon the occurrence of any event, the liability for which is herein assumed by the Contractor, the Contractor agrees to forthwith notify the Jurisdiction in writing of such happening, which notice shall give the details as to the happening, the cause as far as can be ascertained, the estimate of loss or damage done, the names of witnesses, if any, and stating the amount of any claim.

B. In the event the Jurisdiction has or obtains actual knowledge of any event that may result in a claim, the liability for which is herein assumed by the Contractor, the Jurisdiction agrees to notify the Contractor of such event within a reasonable period of time after acquiring knowledge thereof; provided however, the Jurisdiction shall have no duty to inspect the project to obtain knowledge of such events; and provided further the Jurisdiction's failure to so notify the Contractor shall not relieve the Contractor of any liability or obligation herein assumed by the Contractor.

3.09 SAMPLE INSURANCE FORMS

See the SUDAS website (www.iowasudas.org) for examples of standard insurance forms.

END OF SECTION