



# COMMERCIAL CONSTRUCTION AGREEMENT



# HOPKINS ROOFING, INC. COMMERCIAL CONSTRUCTION AGREEMENT

THIS AGREEMENT ("Agreement") is made effective \_\_\_\_\_, 20\_\_\_\_,  
by and between Hopkins Roofing, Inc., (hereinafter the "Contractor") and

\_\_\_\_\_  
(hereinafter "Owner" whether one or more).

**1. SCOPE OF WORK:** Contractor shall furnish all labor, materials, equipment and supplies required to perform the Scope of Work described in Exhibit B for the \_\_\_\_\_ (Project name) construction project located in the town/city of \_\_\_\_\_, county of \_\_\_\_\_ and street address of \_\_\_\_\_  
\_\_\_\_\_. (hereinafter the "Project") in accordance with the provisions of the Contract Documents ("Work" or "Scope of Work").

**2. CONTRACT DOCUMENTS:** The Contract Documents, all of which are hereby incorporated herein by reference, shall include the following:

- (a) This Agreement and Exhibit B hereto.
- (b) Drawings, if any, prepared by or for Owner and provided to Contractor prior to execution of this Agreement, and which are dated and initialed by both Owner and Contractor.
- (c) Specifications, if any, prepared by or for Owner and provided to Contractor prior to execution of this Agreement, and which are dated and initialed by both Owner and Contractor.
- (d) Addenda, if any, prepared by or for Owner and provided to Contractor prior to execution of this Agreement, and which are dated and initialed by both Owner and Contractor.
- (e) Any other document prepared prior to execution of this Agreement, which is dated and initialed by both Owner and Contractor, and which expressly indicates that it is intended to become part of the Contract Documents.
- (f) Any Change Order executed subsequent to the execution of this Agreement if it is signed and dated by and agreed to by both Owner and Contractor.

Unless specifically and expressly indicated elsewhere in the Agreement, the Contract Documents do not include any other documents. If there are any inconsistencies or conflicts among the Contract Documents, the following order of resolving such inconsistencies and conflicts shall control: 2(f), 2(e), 2(d), 2(c), 2(b), and 2(a); to clarify, the documents described in paragraph 2(f) control over all other documents with respect to inconsistencies and conflicts.

**3. CONTRACT PRICE AND PROGRESS PAYMENTS:**

- (a) Owner shall pay Contractor the lump sum amount of \$\_\_\_\_\_ (hereinafter the "Contract Price"), for the Project in accordance with provisions of the Contract Documents, subject to adjustment by any properly made Change Order(s).
- (b) Owner shall deposit earnest money with Contractor in the sum of \$\_\_\_\_\_ on or before execution of this Agreement. This deposit shall be applied to the Contract Price.
- (c) Owner shall make progress payments to Contractor in accordance with the following schedule: Within 14 calendar days of submission of each Payment Application or Invoice by Contractor to Owner, Owner shall pay the amount of the Payment Application or Invoice in full.

Owner shall pay interest in the amount of 18% per annum upon any overdue amount due and payable to Contractor. Interest shall begin to accrue on the 15th day after the submission of a Payment Application or Invoice to Owner, and shall continue to accrue until all principal amounts are paid in full. Failure of Owner to make payment as required by the Contract Documents shall be a material breach of the Contract Documents, and Contractor may seek any and all legal and equitable relief permitted by the Contract Documents and law. If any payment is not timely made and Contractor pursues payment, including but not limited to legal action, arbitration proceedings, or collection efforts, Owner shall pay all costs incurred by Contractor related to such pursuits. Costs shall include but are not limited to attorney fees, expert fees, and all other expenses. If Owner fails to make payment to Contractor as required by the Contract Documents, then Contractor has the right to stop all work on the Project, and Contractor is discharged from any other legal or equitable obligations under the Contract Documents or law, including but not limited to warranties.

- (d) If Owner shall obtain any construction financing for the Project, Owner shall sign all vouchers, drafts of bank checks representing draws within twenty-four (24) hours after funds have been approved for release by Owner's lending institution. Owner acknowledges that Owner's delay in signing any bank documents is a material breach of the Contract Documents, and Contractor may seek any and all legal and equitable relief permitted by the Contract Documents and law. Contractor has the right to stop all work on the project if Owner fails to comply with this subparagraph, and Contractor is discharged from any other legal or equitable obligations under the Contract Documents or law, including but not limited to warranties. In any event, Contractor shall receive payment upon any Payment Application or Invoice, and all of the terms set forth in paragraph 3 of this Agreement shall fully apply to construction financing.
- (e) The Contract Price is based upon current labor, material, equipment, and supply prices as of the execution of this Agreement. If there is a delay in commencement of the Work or continuation of the Work that is in any way attributable to Owner or any person or entity with whom the Owner has a contract (other than Contractor) then the Contract Price shall be increased in the amount of any increase in the price of any labor, materials, equipment or supplies plus a fee of 15% of any such increases. Such payment shall not preclude Contractor from seeking any other legal or equitable remedies permitted by the Contract Documents or law.

**4. FINAL PAYMENT:** Final payment shall be due and payable to Contractor upon Contractor's substantial completion of the Project. Owner agrees to make full payment of the balance of the Contract Price within fourteen (14) calendar days of the date of such substantial completion. Owner agrees, however, that any delay in obtaining a manufacturer's warranty shall not cause or entitle Owner to withhold payment of any proceeds to Contractor. The manufacturer's warranty & Hopkins workmanship warranty do not go into effect until final payment has been made. Failure of Owner to make final payment as required by the Contract Documents shall be a material breach of the Contract Documents, and Contractor may seek any and all legal and equitable relief permitted by the Contract Documents and law. In the event Owner fails or refuses to pay the full balance of the Contract Price or any part thereof as provided herein, Owner shall pay interest of 18% per annum on the unpaid balance beginning from the date final payment was due. If any final payment is not timely made and Contractor pursues payment, including but not limited to legal action, arbitration proceedings, or collection efforts, Owner shall pay all costs incurred by Contractor related to such pursuits. Costs shall include but are not limited to attorney fees, expert fees, and all other expenses. If Owner fails to make final payment to Contractor as required by the Contract Documents, then Contractor has the right to stop all work on the project and Contractor is discharged from any other legal or equitable obligations under the Contract Documents or law, including but not limited to warranties.

**5. CHANGE ORDERS:** A Change Order is a written document agreed to and signed by the Owner and Contractor or a written document signed by the Owner and Contractor as required by the Contract Documents, which (1) makes a change in the Work; (2) makes an adjustment, if any, in the Contract Price; and/or (3) makes an adjustment, if any, in the Contract Time. The Owner shall be responsible to pay any and all Change Orders reflected in any Payment Application or Invoice as required by paragraph numbers 3 and 4 of this Agreement. Contractor shall not be obligated to secure a written Change Order from the Owner before doing the work. If Contractor performs the Work before execution of a Change Order then Owner shall be obligated to execute promptly a Change Order for the Work.

The term "Force Majeure Event" means an event that is not the fault of Owner or Contractor, cannot be controlled, and which causes performance to become impossible, impracticable, interfered with, delayed, disrupted, or hindered. The following are non-exclusive examples of Force Majeure Events and which are not meant to be representative limits on the scope, type, or kind of Force Majeure Events: disease, epidemics, or pandemic (including but not limited to COVID-19); labor or material shortages, delivery delays, or transportation delays caused by diseases, epidemics, pandemic (including but not limited to COVID-19), or shortages and delays that are otherwise unusual; labor disputes not involving Contractor; fire; lightning; war (declared or undeclared) or enemy action; terrorism; governmental actions; unusual weather; quarantine; restrictions on access, work, travel, or materials; unavoidable casualties; delay pending mediation and arbitration; Acts of God; prohibition of or halt to the Work by the University; or changes in the law after the effective date of this Contract (including but not limited to statutes, regulations, ordinances, executive orders, proclamations, etc.). Contractor shall be entitled to an extension of the Contract Time in the amount of time that the Force Majeure Event delayed or impacted the Project. If Contractor and Owner cannot come to agreement on the amount of the time extension, then the claim for an increase in the Contract Time shall be subject to the dispute-resolution procedure in the Contract Documents. If the Force Majeure Event causes any increased costs of materials or equipment, Owner and Contractor shall each bear fifty percent (50%) of the increased amount.

The term "Non-Force-Majeure Event" means an event that is not the fault of the Contractor, that is the fault or responsibility (including but not limited to the legal responsibility) of Owner, and which causes additional work beyond the scope of Work or which causes performance to become impossible, impracticable, interfered with, delayed, disrupted, hindered, or more expensive. The following are non-exclusive examples of Non-Force-Majeure Events and which are not meant to be representative limits on scope, type, or kind of Non-Force-Majeure Events: an act, failure to act, or neglect of the Owner or other contractors engaged by Owner for the Project; changes ordered in the Work; changes ordered in sequence of the Work; hazardous materials; concealed or unknown conditions; or differing site conditions. Contractor shall be entitled to an extension of the Contract Time in the amount of time that the Non-Force-Majeure Event has delayed or impacted the Project, and Contractor shall be entitled to an increase in the Contract Price in the amount of the increased actual costs caused by the Non-Force-Majeure Event plus 15% of the amount of the increased actual costs. If Contractor and Owner cannot come to agreement on the amount of the time extension or price increase, then the claim for an increase in the Contract Time or Contract Price shall be subject to the dispute-resolution procedure the Contract Documents.

**6. SUBSTITUTIONS:** Should Contractor be unable to obtain any material(s), equipment, or supplies specified in any of the Contract Documents when any of the same are needed for inclusion in the Project, Contractor shall have the sole discretion and right to substitute comparable materials, equipment, and supplies, and such substitution shall not cause a decrease in the Contract Price. If the substituted and comparable materials, equipment, or supplies are more expensive than those specified, then Owner shall pay Contractor that cost of such increase plus a fee of 15% of such increased costs.

**7. INSURANCE/PERMITS:** Contractor shall obtain Commercial General Liability and motor vehicle insurance in a reasonable sum which shall be maintained in full force and effect during the progress of the Project and until substantial completion. Contractor shall also maintain insurance required under the Workmen's Compensation and other laws of the State of Iowa with respect to such work. Contractor shall not be required to obtain any other insurance.

Contractor shall not be responsible for any loss due to fire, vandalism, weather or theft of any materials, equipment, and supplies once delivered to the job site. OWNER SHALL ASSUME ALL RESPONSIBILITY FOR ANY SUCH LOSS, AND OWNER SHALL MAINTAIN ALL-RISK BUILDERS-RISK INSURANCE COVERAGE TO PROTECT AGAINST THE SAME. If Owner fails to procure all-risk builders-risk insurance for the Project, Contractor shall have the right to procure such insurance, and Owner shall pay Contractor the premium costs plus a fee of 15%. Owner waives any rights or claims Owner may have against Contractor for any personal injuries and/or property damages incurred by anyone related to or arising out of the Project or Work to the extent any such injuries or damages are covered, in whole or in part, by any insurance. Owner shall indemnify, defend and hold Contractor harmless from any claims, actions, suits, awards, damages, judgments, liabilities, demands, costs, expenses, and attorney fees related to or arising from such alleged injuries and/or damages. Costs shall include but not be limited to attorney's fees, expert fees, and other expenses. OWNER'S INDEMNIFICATION OBLIGATIONS ARE TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING IOWA CODE SECTION 537A.5. Contractor shall be named as an additional named insured upon any of Owner's insurance policies related to or arising out of the Project. Owner shall provide Contractor with copies of all insurance policies and other evidence of the requisite insurance upon Owner's execution of this Agreement. Contractor shall have the right to stop all work on the Project if Owner fails to comply with any provision of this Section 7.

Contractor shall procure any and all necessary permits, and in the performance of construction shall conform to all laws and ordinances which may be applicable thereto. Should the cost of any permit(s) increase over and above the price established at the time of the execution of this Agreement, Owner shall pay the increased cost of obtaining such permit(s).

**8. ALLOWANCES:** If there are allowances as part of this Agreement, Owner shall pay any and all costs in excess of allowances set forth in the Contract Documents plus a sum equal to 15% of the amount of the excess of allowances.

**9. SITE PREPARATION AND UTILITIES:** Owner is responsible for furnishing Contractor full and uninterrupted access to the Project site. Owner shall be responsible for performing all surveys, identifying all boundaries of the premises, and identifying any utilities, encumbrances, and any other matters affecting the premises, including but not limited to easements and rights of way. Owner shall provide Contractor with written documentation of compliance with these obligations before Contractor is required to start or continue with work. Owner acknowledges that it may become necessary to remove trees from the premises and perform clearing and grubbing as part of the construction process, and Owner shall be obligated to pay all such costs plus a fee of 15% of such costs. Owner is responsible for and shall pay all utility costs during the Project.

**10. OWNER'S DEFAULT:** Owner represents that Owner is ready, willing and able to carry out all terms, provisions, and conditions of the Contract Documents. Owner's refusal or inability for any reason to fully and timely perform any of the terms of the Contract Documents shall permit Contractor, at Contractor's sole election, to stop all work, terminate the Contract Documents, and/or bring any and all legal and/or equitable actions against Owner. If Contractor so elects, Contractor shall be entitled to retain Owner's earnest money deposit and recover all damages, losses, expenses, costs, and any other remedies permitted by law or equity, including but not limited to lost profits, home office overhead, job site overhead. Costs shall include but not be limited to attorneys' fees, expert fees, and other expenses.

**11. SUPERVISION:** Contractor shall be responsible for performance, supervision, scheduling, and coordination of the Work, including that of its subcontractors and suppliers, including the construction means, methods, techniques, sequences, and procedures utilized. Owner shall not communicate with or direct any of the work of any of Contractor's employees, subcontractors, or suppliers. If Owner takes any action or engages in any conduct that can reasonably be construed as directing the construction means, methods, techniques, sequences, and/or procedures to be utilized by Contractor or its subcontractors and suppliers then Owner shall be solely responsible and liable for all such work, and Contractor and its subcontractors and suppliers shall not be liable or responsible for any such work.

If Owner uses its own forces or hires any person or entity other than Contractor to furnish any labor, materials, equipment, or supplies in respect to, relating to, or affecting the Project then Owner shall be solely responsible for all such labor, materials, equipment, and supplies, shall be solely responsible for the performance, supervision, scheduling, and coordination of such work, and shall be solely responsible to ensure that it does not impact Contractor in any way. Owner shall be responsible to Contractor for any and all damages, losses, expenses, costs, and any other remedies permitted by law or equity, including but not limited to delays, disruption, and acceleration, that is in any way related to or caused by the Owner's forces or those persons or entities hired by Owner. Costs shall include but not be limited to attorneys' fees, expert fees, and other expenses.

**12. OWNER'S REPRESENTATIONS, ACKNOWLEDGEMENTS AND ADDITIONAL DUTIES:** Owner acknowledges, represents and/or warrants to Contractor that:

- (a) Owner is the holder in fee simple of the premises upon which Contractor shall complete the Project.
- (b) There are no conditions to Owner's title to the premises which restrict, prevent, impair or prohibit any of the Work to be performed thereon.
- (c) Prior to and/or during the Project, to the extent applicable, Owner will see that the water, gas, electric meters will be installed and when installed will be in Owner's name and agrees to pay all utilities to complete the Project. If for any reason whatsoever any utilities are in Contractor's name, Owner agrees to immediately arrange for the transfer of said utilities to Owner, and provide Contractor written verification of such change. Owner shall hold Contractor harmless and indemnify Contractor for any and all claims, damages, costs, or other liability arising out of or relating to any utility expenses. Costs shall include but not be limited to attorney fees, expert fees, and other expenses. The expense of any temporary electric pole shall be paid for by Contractor.
- (d) The premises on which Contractor has agreed to construct is not located within any flood plain area.

**13. INDEMNIFICATION:** To the fullest extent permitted by law, including Iowa Code Section 537A.5, Owner shall hold harmless, defend, and indemnify Contractor, its respective directors, officers, employees, agents, sureties, servants, subcontractors, and suppliers harmless from and against any and all claims, actions, suits, awards, damages, judgments, liabilities, demands, fines, penalties, outlays, costs, expenses, and attorney fees arising out of or related to (i) Owner's breach of any term, condition, or representation in the Contract Documents or (ii) any work, services, conduct, action, inaction, errors, or omissions of Owner, of any architect, engineer, or design profession of Owner, of Owner's own forces or persons or entities hired by Owner, or of any third-party (other than those subcontractors and suppliers of Contractor). Costs include but are not limited to attorney fees, expert fees, and other expenses.

**14. NOTIFICATION TO CONTRACTOR:** Upon substantial completion of the Project and prior to Owner taking occupancy, Contractor will, upon Owner's written request, meet with Owner for a walk-through inspection. During this inspection, Owner may make a punch list of those minor items which Owner and Contractor agree should be touched up and/or modified in order to fulfill the terms of the Contract Documents. Subject to weather conditions, Contractor shall attempt to complete all such items within a reasonable period of time of the date of inspection. Owner shall provide Contractor and its employees, subcontractors, and suppliers access to the Project at reasonable times that are convenient to Contractor to complete the punch list. Owner agrees, however, that any punch list items shall not cause or entitle Owner to withhold payment of any proceeds to Contractor.

**15. COMMENCEMENT/COMPLETION:** Contractor shall commence with construction upon receipt from Owner of a signed and dated Notice to Proceed, and shall proceed diligently to complete the Project. If Owner causes or contributes in any way to any delays, disruption, or acceleration in the completion of the Project, Owner shall be responsible to Contractor for all such damages, losses, expenses, costs, and any other remedies permitted by law or equity, including but not limited to lost profits, home office overhead, and job site overhead. Costs shall include but not be limited to attorneys' fees, expert fees, and other expenses.

**16. POSSESSION:** Owner shall not have or be entitled to possession of the Project until such a time as Owner has fully satisfied/performed all payments and/or all other of Owner's obligations as set forth in the Contract Documents. Contractor may seek and obtain injunctive or other equitable and/or legal relief and/or otherwise employ reasonable self-help measures to prevent Owner's possession or occupancy of the Project in violation of this paragraph. Owner shall reimburse Contractor all of Contractor's costs in doing so. Costs shall include but not be limited to attorney fees, expert fees, and other expenses. If Owner takes possession or occupancy of the Project before Owner performs all of Owner's obligations as set forth within the Contract Documents, Owner shall be deemed to have finally accepted the Project at that time, Owner waives any and all claims against Contractor related to or arising out of the Work or Project, and Contractor is discharged from any and all further obligations related to the Work or Project, including but not limited to those under the Contract Documents and any warranties; however, Owner shall remain responsible for all of Owner's obligations under the Contract Documents.

**17. EXCESS MATERIALS:** Any materials, equipment, and supplies left over upon completion of the Project shall be deemed to be Contractor's property. Contractor may enter upon the premises to remove materials, equipment, and supplies at all reasonable hours.

**18. OWNER'S MATERIAL(S):** Owner shall be responsible for any materials, equipment, and supplies furnished by Owner. Owner shall hold harmless, indemnify and defend Contractor from and against any claims, actions, suits, awards, damages, judgments, liabilities, demands, fines, penalties, outlays, costs, expenses, and attorney fees relating to arising from such materials, equipment, and supplies. Costs shall include but not be limited to attorney fees, expert fees, and other expenses.

**19. RECONSTRUCTION:** In the event any portion of the Project shall be damaged or destroyed by Force Majeure Event or Non-Force-Majeure Event up to the point of substantial completion of the Project or of Owner's possession or occupancy of the Project, whichever is earlier, Owner shall pay all costs and expenses related to arising damage, destruction or Event, including but not limited to all clean up and reconstruction costs. In addition, Owner shall pay Contractor a fee of 15% of all such costs and expenses.

**20. OWNER'S USE OF ARCHITECT, DESIGNER OR ENGINEER:** In the event Owner retains (or has retained) an architect, engineer, or design professional for any purpose related to the Project, Contractor assumes no responsibility whatsoever in respect to such matters. Notwithstanding any terms or conditions of the Contract Documents to the contrary, Contractor shall not be liable for any costs, expenses, damages, or

any legal or equitable remedies that relate in any way to any services supplied by Owner's architect, engineer, or design professional. In the event any problem, claim, damages, or issue arises that relates to or arises from any services supplied by Owner's architect, engineer, or design professional, Owner shall indemnify, defend, and hold harmless Contractor as provided for in paragraph 13 plus a fee of 15% of the costs related to address and/or correct any such problems or issues.

**21. CONTRACTOR'S WARRANTY AND LIMITATIONS:** If Owner has complied with all of its obligations under the Contract Documents (including but not limited to all payment obligations), then Contractor shall provide Owner with a one (1) year limited warranty upon substantial completion of the Project against defects in the quality of workmanship; Contractor's sole obligation under such warranty shall be repair or replacement of defective work. Owner hereby releases Contractor from any and all liability upon expiration of the one-year warranty period. Any Contractor warranty shall be void if all materials and components of a building or system are not supplied by Contractor. The following is a non-exclusive list of items that are not considered defects covered by warranty: (a) damage due to ordinary wear and tear or abusive use, (b) defects that are the result of and/or inherent characteristics common to the materials used, (c) loss, injury or damages caused in any way by any Force Majeure Event or Non-Force-Majeure Event; (d) loss, injury or damages caused in any way by any weather, elements, fire, flood, storm, theft, acts of God, lightning, alteration, electrical surges, and (e) conditions resulting from condensation on, or expansion or contraction of, any materials. With respect to materials, Contractor does not warrant them, but shall assign to Owner the manufacturer's warranty(ies); Owner's sole remedy shall be against the manufacturer, whether or not such manufacturer provides any warranty(ies). In respect to any claims, actions, suits, awards, damages, judgments, liabilities, demands, outlays, costs, expenses, and attorney fees incurred by or asserted, raised or brought against Contractor after expiration of the one-year warranty period, Owner shall defend, hold harmless, and indemnify Contractor against them, including but not limited to all costs. Costs shall include but not limited to attorney fees, expert fees, and other expenses.

Eleven months after substantial completion and if Owner has complied with all of its obligations under the Contract Documents (including but not limited to all payment obligations), Owner has the right to request in writing a walk-through of the Project for purposes of identifying any warranty items that Owner believes are Contractor's responsibility. Owner has the obligation to request such walk-through in writing, and its failure to do so prior to expiration of the one-year warranty period will constitute a waiver of the right for a walk-through and a waiver of any and all warranty claims. During the walk-through, Owner shall specifically identify all warranty items that Owner believes are Contractor's responsibility, and Owner shall immediately provide Contractor a written list of such items. In response, Contractor shall prepare a written list of such items that Contractor agrees are the responsibility of Contractor. If Owner agrees, then Owner shall approve the list by signing and dating the list within 5 calendar days of the Contractor furnishing it to Owner. If Owner disagrees, then Owner shall note the details of such disagreement on the list and then sign and date the list within 5 calendar days of the Contractor furnishing it to Owner. Absent any disagreement noted on the list, Contractor shall only be responsible for the items on the list and Owner waives any other claims or demands not included on the list. If there is disagreement on the list, then the items subject to disagreement may be resolved via the dispute resolution procedure in the Contract Documents.

Contractor's warranties are not transferable and shall terminate upon Owner's sale or transfer of any interest in the property.

This warranty is in lieu of all other warranties, statutory or otherwise, express or implied. CONTRACTOR DISCLAIMS AND OWNER WAIVES ALL WARRANTIES NOT EXPRESSLY PROVIDED FOR IN THE CONTRACT DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF WORKMANLIKE CONSTRUCTION, THE IMPLIED WARRANTY OF HABITABILITY, AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE OR PURPOSE.

Owner agrees to a one-year statute of limitations and two-year statute of repose for purposes of bringing any action against Contractor related to or arising out of the Work, Contract Documents or Project. Owner also agrees that the statute of limitations and statute of repose shall begin to run on the date of substantial completion.

**22. WINTER CONDITIONS:** In addition to the Contract Price, Owner shall be liable for the costs of all “winter conditions” reasonably necessary to complete the Work, including but not limited to “cold weather” or “winter-time” concrete mix, heaters, blankets, and any other items.

**23. MATERIALS:** Cracks, movement, and other similar issues caused by the expansion and/or contraction of materials, equipment, and/or supplies that arise from or relate to seasonable changes in the weather or normal shifting or settling of the structure or property are not the responsibility of Contractor, and Owner waives the right to bring any claims against Contractor relating to any such matters.

**24. MOLD:** Mold may typically be found anywhere that water or moisture is found. Some types of mold have been shown to have adverse health effects on people. Contractor makes no express or implied warranties concerning mold in or about the Project property, whether present during construction or in the future. Owner hereby agrees that Contractor shall not be responsible for, and hereby waives and releases Contractor from any claims, damages, actions, costs or other liabilities, whether direct or indirect, that may be caused by, resulting from, or relating to, mold, or any other similar agent or substance. Owner also agrees to defend, hold harmless, and indemnify Contractor from any claims, actions, suits, awards, damages, judgments, liabilities, demands, outlays, costs, expenses, and attorney fees that arises from or relates to any mold or other similar agent or substance on the Project property. Costs include but are not limited to attorney fees, expert fees, and other expenses.

**25. PERSONAL PROPERTY:** Any and all personal property of Owner or any third party that is moved onto the premises prior to substantial completion is the responsibility of Owner. Contractor is not responsible for any claims or damage to or that arises out of or relates to any such personal property. Owner agrees to defend, hold harmless, and indemnify Contractor from any claims, actions, suits, awards, damages, judgments, liabilities, demands, outlays, costs, expenses, and attorney fees with that arises from or relates to any such personal property. Costs include but are not limited to attorney fees, expert fees, and other expenses.

**26. OWNERSHIP OF PLANS:** In the event Contractor has provided any plans to be used for the Project, Owner acknowledges that Owner shall have no ownership or other rights in the plans (other than a license of use for this particular Project), and that Owner shall be liable to Contractor for any other use or sale of the plans in the liquidated damages amount of \$20,000.00. Owner acknowledges that this liquidated sum is not a penalty, but rather represents a reasonable estimate of the injury caused to Contractor under such circumstances. In the event that Owner has provided any plans to be used under this Agreement, Owner hereby agrees to defend, hold harmless, and indemnify Contractor from and against any and all claims, actions, suits, awards, damages, judgments, liabilities, demands, outlays, costs, expenses, and attorney fees related to or arising out of any intellectual-property claims based in whole or in part on the plans or use of them, including but not limited to patent and copyright claims. Costs include but are not limited to attorney fees, expert fees, and other expenses.

**27. DISPUTE RESOLUTION:** Any claim or dispute between or involving Owner and Contractor that relates to or arises out of the Work, Contract Documents or Project (whether based in tort, contract, statute, or otherwise) shall first be subject to non-binding mediation as a condition precedent to arbitration. If the mediation fails to resolve such disputes and claims, then such claims and disputes are subject to binding arbitration.

The exclusive venue of the arbitration shall be in Polk County, Iowa, and Owner consents and agrees to personal jurisdiction in Iowa. There shall be only one arbitrator for the arbitration. The method of choosing the arbitrator shall be as follows: Contractor shall propose in writing to Owner two proposed arbitrators, and Owner shall, within five (5) calendar days of the Contractor's proposal, indicate in writing to Contractor which of the two proposed arbitrators Owner chooses and said person shall be the arbitrator for the case; if Owner fails meet this deadline, then Contractor shall choose which of the two proposed arbitrators will be the arbitrator for the case. The costs and fees paid to the arbitrator shall initially be evenly divided between Owner and Contractor. If Contractor is a prevailing party in the arbitration, then it is entitled to recover from Owner all costs relating to or arising out of the disputes or claims, including but not limited to any subsequent collection costs. Costs shall include but not be limited to arbitrator fees and expenses, attorney fees, expert fees, and other expenses. The arbitrator shall have the power to award all such costs in the award. The term "prevailing party" is defined as follows: (1) with respect to affirmative claims made by Contractor against Owner, if Contractor obtains an award in its favor against Owner in any monetary amount or for any other relief sought, Contractor shall be a "prevailing party"; (2) with respect to Contractor's defense of claims brought against it by Owner, if Owner does not obtain an award in a monetary amount greater than previously offered by Contractor or does not obtain an award for relief better than previously offered by Contractor, then Contractor shall be a "prevailing party."

Iowa Code Chapters 679A and 679C and the Federal Arbitration Act apply to these mediation and arbitration provisions. The arbitration shall not be administered by the American Arbitration Association ("AAA") unless Contractor chooses to do so; if Contractor chooses to proceed with arbitration through the AAA, then the Construction Industry Arbitration Rules of the AAA in effect at the time of the arbitration demand shall apply, except that AAA Rule R-48(d)(ii) shall be modified to read as follows: "an award of attorneys' fees if it is authorized by law or the parties' arbitration agreement." These mediation and arbitration provisions shall survive termination of the Contract Documents. Contractor retains in full all of its mechanic's lien rights.

Owner and Contractor also agree that all claims sounding in tort whether or not involving a breach of contract are subject to these mediation and arbitration provisions, and each has signed and dated Exhibit A to this Agreement as required by Iowa Code §679A.1(2)(c).

Any architect, engineer, design professional of Owner or any of Owner's own forces or subcontractors and suppliers shall also be subject to these mediation and arbitration provisions, and prior to or upon execution of this Agreement, Owner shall provide Contractor with a signed and dated document from the architect, engineer, design professionals, Owner's forces, subcontractors, and suppliers showing their agreement to these provisions. If Owner hires such persons or entities after execution of this Agreement, then Owner shall provide Contractor, within five calendar days of such hiring, such signed and dated documents showing agreement with these provisions. Owner's failure to comply with this provision is a material breach of the Contract Documents.

**28. NO WAIVER:** The failure of either Owner or Contractor to insist upon the performance of any of the terms and conditions of the Contract Documents, or the waiver of any breach of any of the terms and/or conditions of the Contract Documents, shall not be construed as thereafter waiving any terms and/or conditions or future breach, but the same shall continue and remain in full force and effect.

**29. MODIFICATION:** Any modifications of the Contract Documents shall be binding only if evidenced in writing signed and dated by both Owner and Contractor.

**30. NOTICES:**

All notices that may be given to either of the Parties shall be in writing and to the mailing and email addresses specified below:

If to Contractor:

Hopkins Roofing, Inc.  
929 Opportunity Lane  
Pella, IA 50131  
Email: \_\_\_\_\_

If to Owner:

\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**31. ENTIRE AGREEMENT:** The Contract Documents constitute complete and fully integrated Contract Documents that contain the complete, exclusive, and entire agreement between the parties.

The parties warrant that no promise or agreement not herein expressed has been made to them by the other, and that in agreeing to the Contract Documents they are not relying upon any statement or representation made by the other, but are relying solely upon their own judgment. Each party, prior to agreeing to the Contract Documents, has either consulted with legal counsel concerning the Contract Documents or has had an opportunity to do so.

**32. GOVERNING LAW AND VENUE OF ANY COURT PROCEEDINGS:** The Contract Documents shall be governed by and construed and interpreted in accordance with the laws of the State of Iowa except for conflict of law principles that would cause the application of the law of a state other than Iowa. The venue of any court proceedings related to or arising out of the Work, Contract Documents, or Project shall exclusively be in Polk County, Iowa, and Owner consents and agrees to personal jurisdiction in Iowa.

**33. DRAFTING:** The Contract Documents shall not be construed as drafted by any one party, but rather as drafted by all parties pursuant to a collaborative and joint effort. The contract-interpretation cannon that ambiguities shall be construed strictly against the drafter shall not apply.

**34. SUBSTANTIAL COMPLETION:** The term "substantial completion" as used in the Contract Documents is defined as follows: The first date on which any of the following occurs:

- a. Completion of the Project.
- b. When the Work on the Project has been substantially completed in general accordance with the Contract Documents.
- c. When the Work on the Project has been substantially completed in general accordance with the Contract Documents so that the Owner could or can occupy or utilize the Project for its intended purpose.
- d. When the Project has been certified as substantially completed by the Owner or by an architect, engineer, or design professional authorized by the Owner to make such a certification.
- e. When the Owner is occupying or utilizing the Project for its intended purposes.

**35. CONTRACTOR'S REMEDIES:** Notwithstanding any other provision of the Contract Documents to the contrary, if Owner breaches any provision of the Contract Documents, then Contractor has the right to suspend Work and/or to terminate the Contract Documents, and to seek any and all legal and equitable relief permitted by the Contract Documents and law, including but not limited to legal action, arbitration proceedings, or collection efforts, and Owner shall be responsible for all damages, losses, expenses, costs, and any other remedies permitted by law or equity, including but not limited to lost profits, home office overhead, job site overhead. Costs shall include but not be limited to attorneys' fees, expert fees, and other expenses. Furthermore, Contractor shall be discharged from any other legal or equitable obligations under the Contract Documents or law, including but not limited to warranties.

**36. INTENDED BENEFICIARIES:** Owner and Contractor agree that they are the only intended beneficiaries of the Contract Documents, and that no other person or entity shall be considered an intended beneficiary of the Contract Documents.

**37. WAIVER OF DAMAGES:** Owner waives any and all claims for consequential, indirect, incidental, liquidated, punitive, and special damages against Contractor.

**38. ELECTRONIC TRANSACTIONS:** Contractor and Owner agree to conduct transactions by electronic means with respect to the Project, and they agree to the applicability of Iowa Code Chapter 554D (Uniform Electronic Transactions Act) to the Contract Documents and to their transactions related to or arising out of the Project.

**39. CYBERSECURITY:** Contractor and Owner understand the existence of cybersecurity risks, including but not limited to unauthorized and fraudulent communications from hackers and other frauds purporting to be legitimate and authorized communications. Owner agrees and represents that it will not remit any payment to Contractor at any time, in any amount, or in any form (check, wire, etc.) unless, prior to remitting such payment, Owner calls Contractor at its office number of 641-621-0131, personally speaks to an authorized Hopkins Roofing, Inc. officer or employee, and obtains from that officer or employee the necessary information for purposes of remitting payment. If Owner does not follow this protocol with respect to a payment and that payment is made to a hacker or other fraud and not received by Contractor, then Contractor shall have no liability or responsibility for the matter, Owner shall be fully and completely responsible for the matter, the payment shall be deemed not to have been made by Owner to Contractor, Owner shall be liable to Contractor for the payment amount, and Owner waives any and all claims, causes of action, defenses, and arguments against Contractor with respect to such matter.

**40. PHOTOS/VIDEOS OF PROJECT/PROPERTY:** Owner grants Contractor an unlimited and perpetual license to take, use, and reproduce (including but not limited to via drone) photos and videos of the Project and Project property, including but not limited to the interior and exterior of any residence on the property, for any business, commercial, and marketing purposes. Owner waives any and all common law, statutory, and any other reserved rights as it relates to any such photos or videos taken, used, or reproduced by Contractor.

**41. COMMUNICATIONS:** Owner shall not communicate directly with Contractor's subcontractors and suppliers relating to the Project. If Owner has hired a realtor relating to the Project, Contractor shall have the right to communicate directly with the Owner and/or realtor relating to the Project.

IN WITNESS WHEREOF, Contractor and Owner have executed this Agreement.

**OWNER:**

**Hopkins Roofing, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Signator

\_\_\_\_\_  
Printed Name of Signator

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# EXHIBIT B

Hopkins Roofing, Inc's Scope of Work for this Project is described below. Any labor, materials, services, equipment, and work not described below is excluded from the Scope of Work, even if it is not listed in the Exclusions section of this Exhibit B.

Scope of Work:

Exclusions from Scope of Work:

1. Snow and Ice removal
2. Any prevailing wage requirements or existing collective bargaining agreements
3. Access/lifts not stated under 'Scope of Work'
4. Construction power or temporary lighting
5. Working around conduit concealed with existing roof system
6. Repair of damaged electrical due to roof fasteners used to install roof system
7. Restroom facilities
8. Trash or garbage receptacles and trash removal fees
9. Liquidated damages
10. Retention
11. Bonds
12. Phased construction
13. Flashing curbs or other mechanical/electrical equipment after roof is installed unless agreed upon prior to roof installation
14. Disconnecting and reconnecting or repairing all mechanical and electrical
15. Setting and adjusting satellites
16. Unhooking and reconnecting and moving condensing units
17. Drains, curbs, VTRs, Wood blocking
18. Cutting/patching/securing roof deck, replacing damaged/deteriorated roof deck
19. Asbestos testing, identification, or abatement
20. Repairing condition of walls or roof deck when unknown conditions are uncovered
21. Repair of yard if equipment must be on to access the roof
22. Protection of interior equipment/surfaces
23. Roof access for other contractors by use of Hopkins ladders, scaffold, or lifts
24. Sheet metal caps and gravel stops (unless included in scope)
25. Oil-canning of metal
26. Ex-joints
27. Skylights and roof hatches
28. Working in extreme heat, wind, wet, or other weather conditions
29. Roof protection for other contractors
30. Repair of roof damaged by others
31. Temporary roof system
32. Shop drawings unless required in bid documents