

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (“Release” or “Agreement”) is made by and between Ames Community School District (“Owner” or “District”), Q.C. Geothermal (“Q.C.”), ACI Mechanical, Inc. (“ACI”) and Bruns Headering, Inc. (“Bruns”) related to and arising out of a public-construction project named the Ames New High School (“Project”). The District, Q.C., and ACI entered into written contracts related to the Project where the District was the owner and Q.C. and ACI were the contractors. Q.C. and Bruns entered into a written subcontract related to the Project. The District, Q.C., ACI, and Bruns may collectively be referred to as “Parties” or individually as “Party.”

This Release shall be effective on the last date that any Party signs this Release (“Effective Date”).

Disputes have arisen among the Parties, which has led to the District filing a claim against Q.C., and Q.C. filing claims against ACI and Bruns (collectively referred to as the “Parties’ Claims”) in the pending lawsuit entitled *Ames Community School District v. Q.C. Geothermal, Inc.* Case No. LACV053229 in the Iowa District Court for Story County (the “Lawsuit”).

The Parties believe it is in their best interest to fully and finally settle their disputes and Parties’ Claims, and, to that end, they agree as follows:

1. As full and final settlement of the Parties’ Claims, the following payments shall be made to the District:
 - i. Q.C. shall pay \$220,000
 - ii. ACI shall pay \$30,000
 - iii. Bruns shall pay \$50,000
2. Payments to the District required by Paragraph 1 shall be in the form of a check made payable to the Ames Community School District and sent to Counsel for the District, Brad Beaman at the Ahlers Law Firm, within 14 days of the Effective Date.
3. There are four Parties to this Agreement: the District, Q.C., ACI, and Bruns. The obligations hereunder are several and not joint. If one Party shall fail to perform its obligations hereunder (“Non-Performing Party”) it shall not affect the Releases granted herein to the Performing Parties.
4. Within 7 days of receipt of the last payment, the Parties shall dismiss with prejudice all claims asserted in the Lawsuit. Each Party shall be responsible for their respective litigation and mediation costs, fees, and expenses etc.
5. The District (strictly conditioned upon receipt of payment required by Paragraph 1), Q.C., ACI, and Bruns release, waive, and forever discharge each other, and each other’s representatives, members, shareholders, directors, officers, executives, employees, insurers, predecessors and/or successors in interest, attorneys, agents, heirs, subcontractors, suppliers, consultants, successors and assignees, architects, and engineers, of, from, and against any and all matters, claims, complaints, charges, demands, damages (including but not limited to

any statutory damages), causes of action, debts, liabilities, controversies, judgments, liens, bond claims, warranties, disputes, costs, attorney fees, expert fees, arbitrator fees, losses, demands, awards, and suits of every kind and nature whatsoever, related to and arising out of the Parties' Claims in the Lawsuit ("Released Claims"). The Released Claims do not include claims or rights, if any, the Parties may have under their contracts that do not arise out of or relate to the Parties' Claims in the Lawsuit.

6. Q.C., ACI, and Bruns agree to indemnify, defend, and hold harmless the District from and against any Iowa Code Chapter 573 claims asserted or brought by any entities (and lower-tier entities in the contractual chain) with whom Q.C., ACI, and Bruns had a contract or agreement related to or arising out of any labor, materials, and services furnished related to or arising out of the Project.
7. The Parties represent that they have full power and authority to enter into this Agreement and to agree to all of the terms of this Agreement, and they waive any and all defenses and arguments from any source that they have or may have to the validity or enforceability of any provision of this Agreement, including but not limited to any defenses and arguments based on or arising out of any bankruptcy laws.
8. This Release and the obligations described in it are not intended to be nor shall they be construed as an admission of any liability or negligence, or breach of contract, or fault of any kind, but are the compromise and settlement of disputed claims for the purpose of avoiding further controversy, litigation, and expense.
9. All covenants and agreements herein shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns.
10. This Release shall be governed by, construed, enforced, and interpreted according to Iowa law, excluding conflict of law principles that would result in application of the law of a state other than Iowa. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties, and it shall be construed as being jointly drafted by the Parties and not as being drafted by any one Party. The canon of *contra proferentem* shall have no application to the interpretation, construction, or enforcement of this Agreement.
11. The exclusive jurisdiction and venue of any action or proceeding relating to or arising out of this Release shall be in Story County, Iowa.
12. This Release is a fully integrated agreement and contains the complete, exclusive, and entire agreement among the Parties, and it shall not be modified, altered or changed in any respect except in writing signed by the Parties.
13. The Parties warrant that no promise or agreement not herein expressed has been made to them, that in executing this Release they are not relying upon any statement, promise, or representation made by anyone (other than those contained in this Agreement) concerning the nature, extent or duration damages allegedly sustained by the Parties, or concerning any other thing or matter, but are relying solely upon their own judgment.

14. The Parties state that they are legally competent to execute this Release, and that before signing this Release, they have fully informed themselves of its contents and meaning and have executed it with full knowledge thereof. The Parties state that their attorneys have fully informed them of the legal meaning of this Release.
15. The Parties shall pay their own attorney fees, expert fees, costs, and expenses incurred as a result of the Project.
16. Upon the full execution of this Agreement, each Party is deemed to have withdrawn, dismissed and fully resolved all of such Party's claims against the other Parties and will hold harmless, indemnify and defend (including attorney fees and costs) the other Parties from and against any subrogation claims by their respective insurers.
17. This Agreement may be executed in counterparts, each of which shall be deemed an original, but each of which shall constitute one and the same Agreement. The Parties further agree that a faxed copy or PDF version of the signed counterpart shall be treated as an original.
18. The Parties hereby agree to fully cooperate to execute any and all supplementary documents, and to take all additional action that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
19. The Parties confirm that none of them has assigned the right of action pertaining to any matter referred to herein to any person, firm, company, corporation or other legal entity who might claim against another Party.

SIGNATURE PAGE

School Board President,
on behalf of the District

Date

Q.C. Geothermal, Inc.
By: _____
Its: _____

Date

ACI Mechanical, Inc.
By: _____
Its: _____

Date

Bruns Headering, Inc.
By: _____
Its: _____

Date