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In the

Supreme Court of Iowa

SUPREME COURT NO. 25-0556
JEFFERSON COUNTY NO. EQEQ004660

FS, INC., PLAINTIFF-APPELLANT
VS.
JEFFERSON COUNTY CONSERVATION BOARD, DEFENDANT-APPELLEE

APPEAL FROM THE IOWA DISTRICT COURT FOR JEFFERSON COUNTY
THE HONORABLE SHAWN R. SHOWERS PRESIDING

BRIEF OF APPELLANT FS, INC. AND REQUEST FOR ORAL SUBMISSION

Frederic C. Hayer, ICIS# AT0014986
ASPELMEIER, FISCH, POWER,
ENGBERG & HELLING, P.L.C.
321 N. Third Street
P.O. Box 1046
Burlington, IA 52601
Phone: 319-754-6587
Fax: 319-754-7514
E-mail: fhayer@seialaw.com
ATTORNEYS FOR PLAINTIFF-APPELLANT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. The Board's acceptance is conclusively established and incontrovertible.

The fact that Defendant Jefferson County Conservation Board accepted Plaintiff Four Seasons' bid is deemed admitted and is conclusively established. Under Iowa law, a conditional acceptance is the opposite of an acceptance—a rejection and counteroffer. Did the Jefferson County District Court err by finding, despite the Jefferson County Conservation Board's conclusively established acceptance, that the Board's acceptance of Four Seasons' bid was a conditional acceptance and, thus, not an acceptance at all?

II. Four Seasons proved its damages.

Breach of contract plaintiffs can recover lost expected profits that are reasonably certainty and the burden is on the defendant to prove that the plaintiff failed to mitigate its damages. Four Seasons presented uncontroverted evidence of the exact amount of profits that it reasonably expected to make and the Board elicited no evidence that Four Seasons failed to mitigate its damages. Did Four Seasons adequately prove its damages?

III. Four Seasons proved its breach of contract claim.

Four Seasons proved each element of its breach of contract claim at trial—including acceptance and damages. Did the District Court err by denying Four Seasons' breach of contract claim?

ROUTING STATEMENT

This case presents the application of existing legal principles and issues. Therefore, transfer to the Court of Appeals is appropriate. *See* Iowa R. Civ. P. 61101(3)(a).

NATURE OF THE CASE

Four Seasons is appealing the Jefferson County District Court's Ruling denying its breach of contract claim against Defendant Jefferson County Conservation Board. *See* D0068, Breach of Contract Ruling at 8 (3/9/2025).

STATEMENT OF THE FACTS

FS, Inc. ("Four Seasons") is a construction company that submitted a bid to complete the Prairie Ridge Campground Project (the "Project") for Defendant Jefferson County Conservation Board (the "Board"). D0072, Tr. Trial at 34:21–35:3; 38:22–39:5 (2/18/2025). Four Seasons' bid was made up of line items that noted the cost at which Four Seasons agreed to perform particular portions of the Project. D0072 at 36:7–17; 39:13–18. In determining the amount for each line item, Four Seasons accounted for the cost of labor and materials, overhead, machines, and profit. D0072 at 42:6–14.

Four Seasons incorporated its expected profit as a component of each line item. D0072 at 43:25–44:6. Four Seasons included a profit margin in its bids, in part, to protect it from uncertainties inherent in the construction industry. D0072 at

44:12–45:4. This profit margin was determined by considering Four Seasons' workload at the time, how much they wanted the project, and how much profit it would need to continue doing business. D0072 at 43:25–44:6. Mr. Brueck testified that the Project was the perfect project for Four Seasons because it "fit in [their] workload as far as time of year goes" and because Four Seasons would only need to employ subcontractors for about ten percent of the work. D0072 at 39:4–12.

The typical range of profit margins for the types of projects that Four Seasons completes ranges from five to twenty-five percent. D0072 at 45:5–12. For the Prairie Ridge Campground Project, Four Seasons incorporated a profit margin of twelve percent into its bid. D0072 at 45:13–21. Four Seasons believed this profit margin to be reasonable considering the requirements and risks of the Project. D0072 at 52:24–53:13.

When asked why he thought Four Seasons' profit margin was reasonable, Mr. Brueck testified that, "Considering the work that would have been involved in it, the type of equipment that's used in it. This particular type of project requires a lot of big yellow iron, in which case that stuff's not cheap. There's a lot of cost and risk, as we talked before, and it was definitely something that we had put into our calculations when presenting our bid." D0072 at 53:5–13.

Four Seasons' total bid for the Project was $808,444. D0072 at 42:1–5. With the twelve percent profit margin incorporated in its bid, Four Seasons expected to,

at minimum, make $97,013.28 in profit from completing the Project. D0072 at 45:22–46:5. It is possible that Four Seasons could have even made a profit substantially larger than that. D0072 at 46:6–8.

The Board held a meeting on February 28, 2024, where it opened the bids it had received for the Project. D0072 at 46:24–47:2. Multiple contractors who had submitted bids relating to the Project were present at this meeting. D0056, Plaintiff's Exhibit 2, Plaintiff's Requests for Admissions at Request 1.

Four Seasons' bid was opened at this meeting and, afterwards, the amount of Four Seasons' bid bond was readily ascertainable. D0056 at Requests 2–3. Four Seasons' bid conformed in all material respects to the actual construction work proposed in the Board's Notice to Bidders for the Project. D0056 at Request 23. Four Seasons' bid addressed all material terms relating to the construction of the Project. D0056 at Request 28.

The Board is the only entity responsible for paying for the Project. D0056 at Request 13. The Board had full authority to award the contract for the Project and did not require the approval of any other person, individual, agency, or entity. D0056 at Request 24. The Board never determined at its February 28, 2024 meeting that Four Seasons' bid was non-responsive. D0056 at Request 6. The Board has at all relevant times considered Four Seasons to be sufficiently qualified

and able to perform the contract for the Project if it was awarded to Four Seasons. D0056 at Request 4.

At the February 28, 2024 Board meeting, the Board accepted Four Seasons' bid and assented to the material terms relating to the construction of the Project as contained in Four Seasons' bid. D0056 at Requests 5 and 30. No further material terms relating to the construction of the Project beyond the terms contained in Four Seasons' bid remained to be negotiated after February 28, 2024. D0056 at Request 29.

Ben Brueck, President of Four Seasons, was present at the meeting when the Board accepted Four Seasons' bid. D0056 at Request 27. After the Board meeting, Four Seasons acted in good faith in relation to the Board and the Project. D0056 at Request 16. After the Board's acceptance of Four Seasons' bid, Four Seasons did not have the right to withdraw its bid without forfeiting its bid bond. D0056 at Request 11.

Ben Brueck has experience helping submit bids for several hundred—if not a thousand—projects over the last twenty and more years. D0072 at 35:14–17. The majority of these bids were for public and municipal projects. D0072 at 35:18–25. After the Board passed a motion accepting Four Seasons' bid, Mr. Brueck was ecstatic and was looking forward to the Project. D0072 at 50:2–4. Mr. Brueck believed at that point that there was a contract between Four Seasons and the

Board because, as he testified, "It was pretty clear to everybody there that they voted on the bid and that we were low bidder by all the numbers that were read, and I was fully anticipating the contract." D0072 at 50:11–17.

After that, Mr. Brueck "got up and left that particular day, shook hands, and was appreciative to the Board members and looked forward to doing the Project." D0072 at 51:5–9. Mr. Brueck went back to the office and "told everybody that we were low bid and that we needed to plan on getting our stuff in order for that particular project." D0072 at 51:10–14. Mr. Brueck understood at that point that the Board was obligated to offer Four Seasons the contract for the Project and that Four Seasons was required to enter this contract and post a performance bond. D0072 at 50:23–51:4.

After the Board meeting, the Board refused to execute a contract for the Project with Four Seasons on the ground that Four Seasons' bid was non-responsive. D0056 at Request 7. The Board's determination that Four Seasons' bid was non-responsive was based solely on Four Seasons' bid bond being five percent. D0056 at Request 8. A five percent bid bond is not in violation of any Iowa statute. D0056 at Request 18. The submission of a lower bid bond does not give a bidder a substantial advantage or benefit not enjoyed by other bidders. D0056 at Request 25. The amount of the bid bond with respect to the Project

would not change in any way the work that was to be completed as part of the Project. D0056 at Request 19.

Immediately after learning of the bid bond issue, Four Seasons had a 10 percent bid bond ready and offered to post it. D0072 at 52:3–13. However, the Board never changed its mind and refused to let Four Seasons complete the Project. D0072 at 52:14–16. The Board never offered Four Seasons a contract for the Project and, ultimately, Four Seasons never made any money from the Project. D0072 at 53:14–19.

The Board ended up accepting the bid of another contractor to perform the work on the Project. D0056 at Request 9. The bids of this other contractor and Four Seasons each provide for the same exact work to be completed in constructing the Project. D0056 at Request 10. The amount of the other contractor's bid was $82,025 more than Four Seasons' bid. D0056 at Request 20. By allowing the other contractor to complete the Project, the Board will be obligated to pay $82,025 more than what Four Seasons bid to complete the Project. D0056 at Request 21.

The people of Jefferson County would benefit if the Board could have the Project completed for less money. D0056 at Request 26. The public would not have been prejudiced had the Board allowed Four Seasons to post a performance bond and complete the Project according to its bid. D0056 at Request 22. Had the

Board and Four Seasons entered into a formal contract for the completion of the Project with Four Seasons providing the proposed performance bond for the Project, any discrepancy regarding the amount of the bid bond would have been of no concern to the Board. D0056 at Request 12.

Four Seasons attempted to compel the Board to allow it to complete the project by filing its Petition at Equity for Action of Mandamus on March 15, 2024. D0002, Pet. at Equity for Action of Mandamus (3/15/2024). After learning that the Board had already moved forward with another contractor, Four Seasons filed its First Amended Petition at Law and Equity on March 25, 2024. D0003, First Am. Pet. at Law and Equity (3/25/2024). In this Amended Petition, Four Seasons raised additional claims against the Board—including the breach of contract claim which is the subject of this appeal. D0003 at 5.

On May 8, 2024, Four Seasons served discovery requests on the Board which including Interrogatories, Requests for Production, and Requests for Admissions. D0019, Notice of Serving Discovery Requests (5/8/2024). The Board's responses to each of these discovery requests were due within 30 days from the date of service. D0056 at 1. Plaintiff's Requests for Admissions specified in bold, all-capital lettering that the requests must be admitted or denied within 30 days of service or they will be deemed admitted pursuant to Rule 1.510(2) of the Iowa Rules of Civil Procedure. D0056 at 5.

Thirty days after being served with Four Seasons' discovery requests, the Board had not provided any responses. Thus, the requests contained in Four Seasons' Requests for Admissions were deemed admitted by operation of law. The deemed admitted requests include, but are not limited, to the following:

- Four Seasons' bid was opened at the February 28, 2024 Board meeting. D0056 at Request 2;
- Four Seasons' bid conforms in all material respects to the actual construction work proposed in the Board's Notice to Bidders for the Project. D0056 at Request 23;
- Four Seasons' bid addressed all material terms relating to the construction of the Project. D0056 at Request 28;
- After Four Seasons' bid was opened at the February 28, 2024 Board meeting, the amount of Four Seasons' bid bond was readily ascertainable. D0056 at Request 3;
- The Board has at all relevant times considered Four Seasons to be sufficiently qualified and able to perform the contract for the Project if it was awarded to Four Seasons. D0056 at Request 4;
- At the February 28, 2024 Board meeting, the Board never determined that Four Seasons' bid was non-responsive. D0056 at Request 6;

- The Board is the only entity responsible for paying for the Project. D0056 at Request 13;
- The Board had full authority to award the contract for the Project and did not require the approval of any other person, individual, agency, or entity. D0056 at Request 24;
- At the February 28, 2024 Board meeting, **the Board *accepted* Four Seasons' bid.** D0056 at Request 5 (emphasis added);
- On February 28, 2024, **the Board *assented to the material terms* relating to the construction of the Project as contained in Four Seasons' bid.** (30) (emphasis added);
- No further material terms relating to the construction of the Project beyond the terms contained in Four Seasons' bid remained to be negotiated after February 28, 2024. D0056 at Request 29;
- Ben Brueck, President of Four Seasons, was present at the February 28, 2024 meeting when the Board accepted Four Seasons' bid. D0056 at Request 27;
- After the Board's acceptance of Four Seasons' bid, Four Seasons did not have the right to withdraw its bid without forfeiting its bid bond. D0056 at Request 11;

- After the February 28, 2024 Board meeting, Four Seasons acted in good faith in relation to the Board and the Project. D0056 at Request 16;
- After the February 28, 2024 Board meeting, Four Seasons did not prevent the satisfaction of any conditions relating to the Project which may have existed. D0056 at Request 17;

When no response from the Board had been received after 40 days of it receiving the discovery requests, Four Seasons filed a Motion for Partial Summary Judgment requesting that the District Court grant partial summary judgment in its favor as to its breach of contract claim based in part on the Board's deemed admissions—including admissions that the Board accepted Four Seasons' bid and that the Board assented to all material terms of Four Seasons' bid. D0022, Motion for Partial Summary Judgment (6/17/2024).

By June 24, 2024, the day set for hearing the Board's Motion for Summary Judgment, the Board had still not responded to any of Four Seasons' discovery requests. At the June 24 hearing, the District Court provided the Board with additional time to respond to interrogatories, but did not specifically allow more time to respond to Four Seasons' request for admissions. D0033, Order on Competing Motions for Summary Judgment at 6 (8/13/2024) ("At the June 24 hearing, the Court did provide additional time for Defendant to respond to

interrogatories and to resist Plaintiff's motion for summary judgment, but did not specifically allow more time to respond to admissions.") (emphasis added by District Court).

On August 13, 2024, the District Court issued an Order denying the motions for summary judgment for both the Board and Four Seasons. D0033 at 10. In this Order, the Court noted that Four Seasons' Requests for Admissions "are deemed admitted by Rule 1.510(2) and 1.511." D0033 at 5. The Court also noted in this Order that "Defendant did not make a motion under Rule 1.511 to withdraw or amend the admissions." D0033 at 6. Despite this comment, from the time of this Order through the conclusion of trial, the Board never once made a motion to withdraw or amend its admissions.

At the trial of this matter, Four Seasons argued that—based on the deemed admitted requests for admissions—the issue of the Board's acceptance of Four Seasons' bid was conclusively established and, thus, along with the other admissions and evidence, Four Seasons had proven its breach of contract claim. D0072 at 18:2–24:3. The Board argued that there was no acceptance because the Board's acceptance was conditional. D0072 at 29:20–30:7. The District Court agreed with the Board and found "that the Jefferson County Conservation Board accepted Four Seasons [sic] bid, subject to a conditional approval by an engineer." D0068 at 6.

The District Court additionally noted that: "…evidence related to Plaintiff's alleged damages was woefully inadequate. Even if a contract had been formed, Plaintiff had a duty to mitigate, and the Court would be speculating what Plaintiff's actual losses were." D0068 at 8. The District Court ultimately denied Four Seasons' breach of contract claim and dismissed the matter with costs assessed to Four Seasons. D0068 at 8.

Four Seasons brought this appeal seeking relief from the District Court's Ruling denying its breach of contract claim because the District Court improperly allowed the Board to controvert its deemed judicial admissions and improperly shifted the burden to prove failure to mitigate damages from the Board to Four Seasons.

ARGUMENT

That the Board accepted Four Seasons' bid is conclusively established. Because Four Seasons' bid was an offer, the Board's acceptance created a contract between Four Seasons and the Board. However, the Board argued and the District Court ruled that there was no contract formation because the Board's acceptance was only conditional.

Because a conditional acceptance is not a true acceptance, the Board's argument contradicts its admission that the Board accepted Four Seasons' bid. And because evidence cannot be considered to contradict conclusively established

admissions, it was improper for the District Court to issue a ruling contradicting the Board's conclusively established admissions—particularly the admission that the Board accepted Four Seasons' bid.

Further, Four Seasons adequately proved its damages. Four Seasons' president, Mr. Benjamin Brueck, testified extensively about how Four Seasons' bid was calculated, how expected profits were incorporated into its bid, and how those expected profits were reasonable. And the Board apparently had no cause to cast doubt on any of that testimony because it did not pose any questions related to damages during its cross-examination of Mr. Brueck. A party can recover the profits it expected to make from the performance of a contract from the party breaching that contract as long as the damages are reasonably certain. In this case, Four Seasons provided enough evidence to show that its lost profits damages were reasonably certain.

While a breach-of-contract plaintiff has the duty to mitigate its damages, mitigation of damages is an affirmative defense which the defendant has the burden of proof to show. The Board never raised a mitigation of damages argument in its Answer and presented no evidence to support the proposition that Four Seasons failed to mitigate its damages at trial. Therefore, Four Seasons' evidence of its damages was adequate and the Board failed to meet its burden to prove—let alone allege—that Four Seasons failed to mitigate its damages.

After correcting the District Court's contract formation and damages errors, Four Seasons has proven each of the elements of its breach of contract claim. For these reasons, and for the reasons more completely stated below, Four Seasons respectfully requests that this Court reverse the ruling of the District Court and grant judgment in favor of Four Seasons on its breach of contract claim in the amount of $97,013.28.

I. The Board's acceptance is conclusively established and incontrovertible.

The fundamental issue in this appeal is whether the conclusively established admission that the Board accepted Four Seasons' bid precludes a finding that the Board did not accept Four Seasons' bid on the basis that its acceptance was conditional. Four Seasons requested that the Board admit or deny whether it accepted Four Seasons' offer within 30 days. The Board did not do so. Thus, under the Iowa Rules of Civil Procedure, the proposition that the Board accepted Four Seasons' bid became conclusively established.

At any time during or before trial, the Board could have moved to amend or withdraw its deemed admission that it accepted Four Seasons' bid. The Board never did so. Four Seasons had every right to rely on the Board's deemed admissions at trial, yet the Board argued that, although it did accept Four Seasons' bid, it actually didn't accept Four Seasons' bid because its acceptance was a conditional acceptance—which is not a real acceptance.

The District Court was incorrect to consider evidence of the Board's claimed conditional acceptance because this evidence contradicted the conclusively established proposition that the Board accepted Four Seasons' bid. Our rules give civil litigants the right to rely on judicial admissions made by an opposing party in preparing a case for trial. The District Court incorrectly applied the rules and denied Four Season this right and, for that reason, its decision should be reversed.

A. Preservation of Error

The issue of whether the District Court properly considered evidence contradicting the Board's admissions was raised at the trial of this matter and properly preserved. Four Seasons objected to evidence contradicting the conclusively established admissions and the District Court acquiesced to a standing objection to all such evidence. D0072 at 68:12–20. Further, Four Seasons argued in its Post-Trial Brief that the District Court should not consider any evidence contradicting the Board's admissions. D0066, Plaintiff's Post-Trial Brief at 3–4 (3/7/2025).

B. Scope and Standard of Review

Iowa appellate courts review issues involving requests for admissions for errors at law. *See Double D Land & Cattle Co. v. Brown*, 541 N.W.2d 547, 549 (Iowa Ct. App. 1995). Appellate courts are not bound by the trial court's

application of legal principles of its conclusions of law. *Van Sloun v. Agans Bros.*, 778 N.W.2d 174, 179 (Iowa 2010). This Court, therefore, is not bound by the District Court's incorrect application of the Rules of Civil Procedure regarding deemed admissions being conclusively established and may reverse the District Court's Ruling should it find that the Board's deemed judicial admission that it accepted Four Seasons' bid precludes the consideration of evidence controverting this admission.

C. Argument

The Jefferson County District Court quoted Mark Twain in its analysis. The quote is to the effect that Mr. Twain considers himself a "pretty versatile fool when it comes to contracts" and that he has a particular knack for avoiding their legal consequences. *Mark Twain's Notebook*, page 393. For better or worse, this is a matter before an Iowa court of law—not the adventures of Huckleberry Finn.

The Defendant Jefferson County Conservation Board is deemed to have admitted that it accepted Plaintiff Four Seasons' bid and this admission is conclusively established as a matter of law. Yet, the Board argued at trial that its admitted acceptance was not actually an acceptance because it was a conditional acceptance. No doubt Mr. Twain would have approved of this versatility. The District Court agreed with the Board's argument and denied Four Seasons' breach of contract claim on the basis that the Board's acceptance was conditional.

Because the fact that the Board accepted Four Seasons' bid is conclusively established and because the Board's argument that it only conditionally accepted the bid contradicts this fact, it was improper for the Court to consider evidence that the Board's acceptance was conditional. Instead of relying on the Board's contradictory evidence and argument, the Court should have enforced the legal consequences of the Board's admission and granted judgment in favor of Four Seasons on its breach of contract claim.

1. Conclusively established admissions cannot be contradicted.

Under Iowa Rule of Civil Procedure 1.510(2), a matter contained in a written request for admission "is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may on motion allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter…" The Board did not serve any response to Four Seasons' Requests for Admissions within 30 days of their service. Thus, the matters contained in these requests are deemed admitted.

Under Rule 1.511, "[a]ny matter admitted under rule 1.510 is conclusively established in the pending action unless the court on motion permits withdrawal or amendment of the admission." Iowa R. Civ. P. 1.511. The Board never filed a motion to withdraw or amend the deemed admitted matters in Four Seasons' Requests for Admissions, so these matters were conclusively established. *See id.*;

see also Maldonado v. Sharp (In re Est. of Thacker), No. 23-1828, 2025 Iowa App. LEXIS 182, at *4 (Ct. App. Feb. 19, 2025) ("And to the extent she intended to contest the district court deeming facts admitted following her failure to timely respond to the requests for admissions, she never sought leave to withdraw or amend those admissions…").

a. Rule 1.510 admissions are incontrovertible judicial admissions.

Regarding the conclusively established nature of the Board's admissions, it is important to recognize the difference between evidentiary and judicial admissions. Evidentiary admissions include admissions made in pleadings in a separate case, superseded or amended pleadings, and some forms of testimony. *See* David S. Coale, Article, *A New Framework For Judicial Estoppel*, 18 Rev. Litig. 1, 13–14. Examples of judicial admissions are admissions obtained by requests for admission, admissions in pleadings, and stipulations. *See id.* at 13.

An evidentiary admission may typically be controverted at trial. *See* Finman, *The Request for Admission in Federal Civil Procedure*, 71 YALE L.J. 371, 380–81 ("If an admission is merely evidence, not conclusive proof—if a litigant is free to dispute a contention even though he has 'admitted it'—the controversy is not limited."). However, a judicial admission functions to prevent "the admitting party from offering proof at trial to contradict it." *Id.* at 15; *see also Pflepsen v. Univ. of Osteopathic Med., Coll. of Podiatric Med.*, 519 N.W.2d 390, 392 (Iowa 1994)

("These authorities [supporting academic dismissal] are to no avail to the college in this case because of its judicial admission that the dismissal was nonacademic. As the trial court found, Iowa rule of civil procedure 128 [now 1.511] provides that the admission conclusively established the matter in this litigation.").

The conclusive nature of judicial admissions is necessitated by their purpose. Rules 1.510 and 1.511—which are based on Federal Rule of Civil Procedure Rule 36—allow parties to narrow the issues to be resolved at trial and thereby save themselves and the court substantial time in proving and resolving issues that are admitted. *See Seneca Waste Sols., Inc. v. D & K Managing Consultants, LLC*, No. 13-1777, 2015 Iowa App. LEXIS 155, at *14 (Ct. App. Feb. 11, 2015) (quoting Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2264 (3d ed. 2010) ("The salutary function of Rule 36 in limiting the proof would be defeated if the party were free to deny at the trial what he or she has admitted before trial."); Fed. R. Civ. P. 36 advisory committee's note ("Unless the party securing an admission can depend on its binding effect, he [or she] cannot safely avoid the expense of preparing to prove the very matters on which he [or she] has secured the admission, and the purpose of the rule is defeated.")).

Because admitted matters are conclusively established, Iowa appellate courts ignore evidence contradicting them. *See Double D Land & Cattle Co., Inc.*, 541 N.W.2d at 552 (concluding affidavits could not refute admissions in summary

judgment ruling); *Seneca Waste Sols., Inc.*, No. 13-1777, 2015 Iowa App. LEXIS 155, at *16 ("The district court permitted contradictory testimony from [the admitting party]. On our de novo review, we ignore the contradictory testimony.").

Thus, under Iowa law, a party cannot elicit evidence which contradicts its own admissions. *See Double D Land & Cattle Co., Inc.*, 541 N.W.2d at 552 (citing *United States v. Kasuboski*, 834 F.2d 1345, 1350 (7th Cir. 1987) (citing *O'Bryant v. Allstate Ins. Co.*, 107 F.R.D. 45, 48 (D. Conn. 1985) ("One must suppose that when the rule makers provided that a matter was conclusively established, that was the end of any dispute on that matter. When concluded, a matter would not be open for further dispute or contest."); *see also* Finman, *The Request for Admission in Federal Civil Procedure*, 71 YALE L.J. 371, 380–81 ("A proposition that stands admitted should be deemed established without further proof, and disproof should not be permitted.").

b. The Board's acceptance of Four Seasons' bid is conclusively established.

Four Seasons served its Plaintiff's Requests For Admissions on the Board's counsel on May 8, 2024. The fifth of these requests states: "At the February 28, 2024 Board meeting, the Board accepted Four Seasons' bid." Because the Board did not respond to Four Seasons' requests within 30 days, all the requests were deemed admitted. And because the Board never requested permission from the

court to withdraw or amend the admissions, they stood as conclusively established judicial admissions at the time of trial.

i. The Board's admissions pertained to the legal issue of acceptance.

The question now before this Court is what effect does the Board's admission that it accepted Four Seasons' bid have on the merits of this matter. Four Seasons contends that the admission should be interpreted according to its plain meaning to the effect that the Board legally accepted Four Seasons' bid so as to satisfy the "acceptance" element of contract formation. Thus, along with Four Seasons' bid—which constitutes an offer—the Board's acceptance created a legally binding contact between the parties. *See Horsfield Constr. v. Dubuque Cnty.*, 653 N.W.2d 563, 568 (Iowa 2002); *Rick v. Sprague*, 706 N.W.2d 717, 724 (Iowa 2005) ("To be bound, the contracting parties must manifest a mutual assent to the terms of the contract. 'This assent usually is given through the offer and acceptance.'" (quoting *Kristerin Dev. Co. v. Granson Inv.*, 394 N.W.2d 325, 331 (Iowa 1986)).

Under Rule 1.510, a party may request another party to admit the truth of a matter relating to the application of law to fact. *See* Iowa R. Civ. P. 1.510. "An admission is not improper because it relates to an ultimate fact or to an issue that is dispositive of the case." *Allied Gas & Chem. Co. v. Federated Mut. Ins. Co.*, 332 N.W.2d 877, 880 (Iowa 1983) (citing *Asea, Inc. v. Southern Pacific Transportation*

Co., 669 F.2d 1242, 1248 (9th Cir. 1982)). Thus, Four Seasons was able to properly request that the Board admit or deny whether it had accepted Four Seasons' bid—and the Board's admission of the same can relate to the ultimate legal issue of contract formation.

Under Iowa law, "[a]n 'acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.'" *Heartland Express, Inc. v. Terry*, 631 N.W.2d 260, 270 (Iowa 2001) (quoting Restatement (Second) of Contracts § 50). The only rational conclusion to be drawn from the Board's fifth admission is that the Board accepted Four Seasons' bid according to the commonly understood definition of acceptance as a legal term of art. *See* BLACK'S LAW DICTIONARY 11 (7th ed. 1999) ("**acceptance**, n. **1.** An agreement, either by express act or by implication from conduct, to the terms of an offer so that a binding contract is formed.").

Beyond admitting that it accepted Four Seasons' bid in Request 5, the Board also admitted the following propositions showing its assent to the terms of Four Seasons' bid:

- Four Seasons' bid addressed all material terms relating to the construction of the Project. (Request 28);

- No further material terms relating to the construction of the Project beyond the terms contained in Four Seasons' bid remained to be negotiated after February 28, 2024. (Request 29); and
- On February 28, 2024, the Board *assented to the material terms* relating to the construction of the Project as contained in Four Seasons' bid (Request 30) (emphasis added).

These further admissions evidence the Board's manifestation of assent to Four Seasons' bid from which it can be concluded that the Board accepted Four Seasons' bid according to the common understanding of the term "acceptance" in the context of contract law. *See Heartland Express, Inc.*, 631 N.W.2d at 270.

ii. No other explanation of the Board's acceptance makes sense.

The Board may argue that its admission should not be interpreted to this effect on the basis that its admitted acceptance was only to the effect that it said it accepted Four Seasons' bid and that, in that context, it may have said other things which negate the legal effect of its acceptance. The Board's argument that its acceptance was conditional will be addressed later but, generally, this interpretation is flawed because it misunderstands the plain meaning of the request. The request did not ask the Board to admit or deny whether it had made any particular statement at any particular time, but rather it requested the Board to admit or deny whether on, February 28, 2024, it accepted Four Seasons' bid.

Further, the Board may argue that the fifth request did not specify that the term "accepted" related to the legal term of art "acceptance". This interpretation is flawed because "acceptance" is a key element of contract formation and a key issue in Four Seasons' breach of contract claim. The Board was on notice of this claim and was represented by legal counsel at the time it was served with the requests.

Because the terms "accepted" and "acceptance" are commonly used and well-known legal concepts—especially in the context of a breach of contract claim—the Board should have understood that the effect of the admission would be to conclusively establish that it accepted Four Seasons' bid as a legal proposition in this matter. A pedantic requirement that requests for admissions seeking admissions as to legal issues explicitly qualify that each legal term used should be interpreted according to its commonly accepted definition as a legal term of art is not found in the rules and would be overly onerous on litigants should courts create such a rule.

Finally, the Board was on notice that Four Seasons was interpreting the Board's admission to go to the legal issue of the Board's acceptance of Four Seasons' bid. On pages 8–10 of Four Seasons' Memorandum of Authorities in Support of Motion for Partial Summary Judgment filed on June 17, 2024, Four

Seasons argued that the Board legally accepted Four Seasons' bid based on the Board's admissions—and particularly Request 5.

Given that the plain language of the Board's admissions shows that the Board legally accepted Four Seasons' bid and that Four Seasons was relying on this interpretation, the Board could have mitigated any misunderstanding of the admissions by requesting to withdraw or amend its admissions. Because it did not do so, it should be bound by the plain meaning and legal effect of its admissions.

Therefore, Four Seasons' Request 5 and the Board's resulting admission should be given the effect of its plain meaning—that the Board accepted Four Seasons' bid.

c. The Board's conditional acceptance argument contradicts its conclusively established admissions.

Despite the Board's admission that it accepted Four Seasons' bid, the Board argued at trial that no contract was established between the Parties because the Board only conditionally accepted Four Seasons' bid. The Board is correct that, if it conditionally accepted Four Seasons' bid, an enforceable contract would not have been created. However, this argument could not have been properly made and considered by the District Court because it contradicts the effect of the Board's conclusively established judicial admission that it accepted Four Seasons' bid.

Although it contains the word "acceptance", a "conditional acceptance" is not an acceptance at all. *See Hayne v. Cook*, 109 N.W.2d 188, 193 (Iowa 1961) ("Of course a conditional acceptance is not an acceptance at all, but is merely a counteroffer, and the contract would not be binding until the new offer had been received and acted upon by the original offerer."). Thus, a conditional acceptance is actually, in the terms of contract law, the exact opposite of an acceptance—a rejection. *See O'Brien v. Fitzhugh*, 215 N.W. 944, 946 (Iowa 1927) ("Unless it may be said that the alleged acceptance by the appellee of the offer of appellant embodied the same terms as contained in his offer, there is no acceptance, but a rejection of the offer.") (citing *Baker v. Johnson County*, 37 Iowa 186; *Siebold v. Davis*, 67 Iowa 560).

The Board's argument recognizes its admission of acceptance, but attempts to qualify its acceptance as merely a conditional acceptance. However, the Board's attempted qualification contradicts the original premise of its acceptance. Thus, the Board's conditional acceptance argument directly contradicts the substance of its admission.

The Board's argument is not akin to a case where a party, admitting that they prepared a sandwich, could later additionally clarify that the sandwich they prepared was a cucumber sandwich. Instead, the Board's argument is similar to someone admitting that a sandwich contained cucumbers, but then later attempting

to claim that the sandwich contained *sea* cucumbers—and so, technically, because sea cucumbers are an animal not a vegetable, the sandwich did not contain any cucumbers at all.

As a sea cucumber is no cucumber, a conditional acceptance is no acceptance. The Board's argument that its acceptance was conditional serves to undermine and disprove its own admission and, therefore, evidence supporting this argument should have been excluded.

d. The District Court erred by considering evidence contradicting the Board's conclusively established admissions.

At trial and over Four Seasons' objection, the District Court allowed the Board to present evidence which contradicted the Board's admission that it accepted Four Seasons' bid by tending to show that the Board acceptance was conditional and, therefore, not an acceptance at all. This evidence took the form of testimony from engineer Marcus Clark and Board Director Shawn Morrissey as well as documentary evidence of the Board's agenda and minutes for the February 28, 2024 meeting. Because such evidence was elicited by the Board to controvert its admission that it had accepted Four Seasons' bid, the District Court should have excluded it.

Moreover, the District Court relied on this evidence and ended up agreeing with the Board's argument that the Board's acceptance was conditional. The

District Court should have excluded the Board's contradictory evidence to further judicial efficiency and accomplish the purpose of Rules 1.510 and 1.511. However, even after this contradictory evidence was admitted, this evidence could have had no effect in controverting the Board's already conclusively established admission that it accepted Four Seasons' bid.

Thus, the District Court improperly considered the Board's contradictory evidence and improperly agreed with the Board's argument that its acceptance was conditional because no evidence could overcome the Board's admitted acceptance. The District Court's conclusion that the Board's acceptance was conditional cannot be harmonized with the conclusively established issue that the Board accepted Four Seasons' bid. For these reasons, the Jefferson County District Court's decision in favor of the Jefferson County Conservation Board should be reversed.

i. Policy rationales support upholding the rules.

Should the District Court's decision be affirmed, Iowa's civil procedure Rules 1.510 and 1.511 would be eviscerated. These rules play an important role in limiting the facts and issues to be litigated in a case and promote judicial efficiency. Parties need to be able to rely on the binding effect of judicial admissions under these rules. If a party is allowed to present evidence in direct conflict with the substance of issues it has already admitted, the opposing party

would still be required to spend precious time in discovery and at trial in order to secure proof of the issue already admitted. This would negate the beneficial efficiencies that these rules were intended to provide. *See Seneca Waste Sols., Inc.*, No. 13-1777, 2015 Iowa App. LEXIS 155, at *14.

Once the Board's admissions were established—unless they were allowed by the District Court to be withdrawn or amended—Four Seasons had the right to rely on them. Four Seasons, thus, had the right not to pursue further discovery, motions to compel, and depositions to obtain evidence regarding the issue of the Board's acceptance of its bid. Four Seasons had the right to prepare for trial with the understanding that the issue of the Board's acceptance was already conclusively established and that Four Seasons would, therefore, not be required to elicit any evidence or cross-examine any witnesses about this issue.

However, at trial, the Board argued and presented evidence that its acceptance was conditional, and therefore not an acceptance. Whatever the reasons behind it, this tactic cannot be condoned. Should the District Court's ruling be affirmed, less scrupulous parties could be incentivized to "bait" their opponents with what appears to be an admission and later at trial "switch" the substance of their admission to stand for the opposite proposition.

And likewise, if the District Court's decision is affirmed—even on a nuanced ground of linguistic interpretation—Iowa litigants will be left second-

guessing whether they will be able to depend on the judicial admissions they have secured or whether the admitting party will be allowed to weasel their way out and controvert issues they already admitted. Affirming the District Court's ruling would thoroughly thwart the purpose of Rule 1.510 admissions and would negate the ability of parties to narrow the scope of their trial preparation by being able to rely on the conclusively established nature of the admissions.

The rule of law is at the heart of our justice system, and the rule of law depends on the rules being enforced. In order to preserve the integrity of the entire Iowa Rules of Civil Procedure, and particularly Rules 1.510 and 1.511, the District Court's decision relying on the Board's improper evidence must be reversed and remanded with instructions to enter judgment in favor of Four Seasons in the amount of $97,013.28—the amount of damages Four Seasons proved at trial.

II. Four Seasons proved its damages.

At the close of its Ruling, the District Court stated: "Additionally, evidence related to Plaintiff's alleged damages was woefully inadequate. Even if a contract had been formed, Plaintiff had a duty to mitigate, and the Court would be speculating what Plaintiff's actual losses were." The evidence presented at trial and Iowa law show that this statement by the District Court was incorrect because Four Seasons proved its damages and had no duty to prove that it was unable to mitigate its damages.

A. Preservation of Error

Four Seasons preserved error as to its damage claims by eliciting testimony at trial as to its claimed damages. Further Four Seasons argued for its claimed damages in its Post-Trial Brief. D0066 at 3.

B. Scope and Standard of Review

The standard of review is for correction of errors at law when an appellate court reviews the judgment of a district court in a nonjury law case. *Bus. Consulting Servs. v. Wicks*, 703 N.W.2d 427, 429 (Iowa 2005). Appellate courts are not bound by the trial court's application of legal principles or its conclusions of law. *Van Sloun*, 778 N.W.2d at 179. Because the District Court misapplied Iowa law on lost profit damages and improperly shifted the burden to prove mitigation of damages onto Four Seasons, this Court should reverse the District Court's finding that Four Seasons failed to adequately prove its damages.

C. Argument

1. Four Seasons proved its damages.

First, Four Seasons' damages evidence was adequate to form the basis of a valid judgment. Second, the burden to prove failure to mitigate damages was on the Board—and it did not even plead, let alone provide evidence showing, that Four Seasons failed to mitigate its damages. Third, Four Seasons' damages were

not speculative. Four Seasons identified the exact amount of expected profit that it lost due to the Board's breach and showed that the Project fit in Four Seasons' workload.

a. Four Seasons' president testified as to its damages.

Benjamin Brueck is the owner and president of Four Seasons. Mr. Brueck testified on direct examination about the amount of expected profit that Four Seasons reasonably expected to make by completing the Project. Mr. Brueck testified that Four Seasons' bid was made up of line items which are "a list of items that are relevant to the actual bid that requires a quantity that you put a unit price to that then has an extended price which then totals up to give you your full contract quality price." D0072 at 36:7–17.

Mr. Brueck testified with regard to calculating the amount for each line item that, "depending on what the line item is – for example, if it's putting in pipe of any size, we would get the material quotes, the bedding pipe that goes – or the bedding prop that goes around it, the excavation equipment, the fuel, the labor, overhead, and then profit, and we build that all into the line item to establish our unit price." D0072 at 36:21–37:2. Four Seasons' bid—which was admitted into evidence as Plaintiff's Exhibit 1—contained the line items that resulted in the total amount of Four Seasons' bid. *See* D0072 at 42:6–14. ("The line-item bid gives a brief description that also as a quantity, which then we figure our unit price based

on, as I spoke before, with material and labor, overhead, machines, profit, and then the math carrying across to execute the total amount, which then totaled the 808.").

Mr. Brueck then described in detail how the first line item was calculated to provide a further illustration of how Four Seasons' bid was created. D0072 at 42:10–43:4. Describing how Four Seasons' expected profit is incorporated into each line item, Mr. Brueck testified that, "We – each of the line items, when we calculate, we put in a formula based on how our workload is at the current time, how aggressive we want to be on a particular project, and, ultimately, what we need to have for profit to conform or to be able to continue doing business."

Mr. Brueck agreed that the profit margin incorporated into Four Seasons' bid was in part to protect Four Seasons from risks in completing the Project. Mr. Brueck testified that the typical profit margins for the types of projects that Four Seasons completes will range anywhere from 5 to 25 percent. Mr. Brueck stated that the profit margin that was incorporated into Four Seasons' bid for the Project was 12 percent.

Based on this, Mr. Brueck testified that 12 percent of the total bid amount of $808,444 would have been Four Seasons' profit on the Project. Mr. Brueck stated that, if everything went according to plan, he would have expected to make, "at minimum", 12 percent of the total bid amount on the Project and that it is possible that Four Seasons could have actually made a profit substantially larger than that.

Mr. Brueck testified that, based on the profit margin calculation, Four Seasons expected to make $97,013.28 by completing the Project. Mr. Brueck testified that he believed this expectation was reasonable and explained that "Considering the work that would have been involved in it, the type of equipment that's used in it. This particular type of project requires a lot of big yellow iron, in which case that stuff's not cheap. There's a lot of cost and risk, as we talked before, and it was definitely something that we had put into our calculations when presenting our bid." Mr. Brueck testified that Four Seasons did not end up making any money from the Project. The Board cross-examined Mr. Brueck, but did not ask any questions or elicit any testimony pertaining to Four Seasons' damages or their reasonableness. *See* D0072 at 57:13–63:2.

Based on the above recounting of Mr. Brueck's testimony as to the lost profit damages that Four Seasons suffered based on the Board not allowing them to complete the Project, the District Court's characterization of Four Seasons' damages evidence as "woefully inadequate" does not hold up to scrutiny. Mr. Brueck testified extensively about how Four Seasons' bid was calculated, how expected profits were incorporated into its bid, and how those expected profits were reasonable. And the Board apparently had no cause to cast doubt on any of that testimony because it did not even attempt to cross-examine Mr. Brueck or present any other evidence regarding the adequacy of Four Seasons' damages.

Rather than being "woefully inadequate", Four Seasons proved its lost profits damages as allowed by Iowa law. Thus, the District Court was wrong to base its denial of Four Seasons' breach of contract claim on Four Seasons' proof of damages being inadequate.

b. Four Seasons' damages were not speculative.

"'Under modern practice the … rule does not deny a recovery of profits because of the fact that they are profits; where recovery is denied, it is because they are speculative, contingent, conjectural, remote, or uncertain.'" *Shinrone, Inc. v. Tasco, Inc.*, 283 N.W.2d 280, 286 (Iowa 1979) (quoting 25 C.J.S. Damages § 42, at 735). "When the profits which are sought are those arising out of the breached contract, those profits … are presumed to have been in the contemplation of the defaulting party at the time he entered into the contract and are recoverable if proved with reasonable certainty." *Id.* (quoting with express approval 22 Am.Jur.2d Damages § 174, at 246–47). Thus, a party can recover the profits it expected to make from the performance of a contract from the party breaching that contract as long as the damages are reasonably certain. *See id.*

Four Seasons proved its damages through the testimony of its President—Mr. Ben Brueck. Mr. Brueck testified that Four Seasons had calculated the amounts of its bid by incorporating a set profit margin so that Four Seasons would be compensated for the risk it incurred in completing the Project. It is impossible to

predict the future, and Mr. Brueck testified that—depending on site conditions and other factors—it is possible that Four Seasons could have even made a substantially larger profit. However, lack of a crystal ball does not prevent Iowa courts from recognizing fair damage amounts for lost profits when appropriate. It is difficult to imagine how Mr. Brueck's uncontroverted testimony of Four Seasons' damages could have been, in the context of lost profit damages, more exact or clear.

The Iowa Supreme Court reversed a district court judgment which only allowed recovery of nominal damages to a plaintiff participating in a contest for subscriptions to a corporation's journal after the corporation cancelled the contest when the plaintiff appeared likely to win at least some prize under the contest. *See Wachtel v. Nat'l Alfalfa Journal Co.*, 176 N.W. 801, 805 (Iowa 1921) ("There is, of necessity, much uncertainty as to what might have been the outcome of the contest; but the probabilities of plaintiff's winning a prize, under the facts disclosed, were not so uncertain, indefinite, and contingent as to limit her right of recovery, as a matter of law, to nominal damages only."). The *Wachtel* Court did find, however, that plaintiff's claimed damages for pain and suffering were too remote because they "could not have been within the contemplation of the parties at the time of making the contract." *See id.*

In this case, Four Seasons' damages are presumed to be within the contemplation of the parties because they arose directly from the profit Four Seasons expected to make from completing the Project. *See Shinrone, Inc.*, 283 N.W.2d at 286. And, although all future damages come with some degree of uncertainty, Four Seasons' damages were reasonably definite. Four Seasons had much experience in bidding projects and this Project was relatively simple and was expected to progress according to Four Seasons' plan. Four Seasons factored in a reasonable profit margin into its bid before it made it, this profit margin can be calculated exactly, and that exact amount is what Four Seasons is requesting in damages.

The Iowa Supreme Court has found that a plaintiff's damages for lost profits were proper—and not uncertain or speculative—where a cereal beverage wholesaler based its lost profits calculation on the profit it expected to make by selling the beverage to retailers based on advance sales. *Omaha Beverage Co. v. Temp Brew Co.*, 171 N.W. 704, 706 (Iowa 1919).

This is similar to the profit Four Seasons expected to make in completing the Project because Four Seasons calculated how much it would cost it to complete each line item in its bid, and factored in a profit margin of twelve percent on each line item so that it stood to profit $97,013.28 by completing the Project. *See id.* ("The law is well settled that, under the circumstances disclosed in this case, in

event of a breach of the contract of sale, the purchaser is entitled to recover, not only the difference between the contract price and the market value of the commodity sold, but also for the loss of profits, if any, which the purchaser would have acquired, had the goods been as agreed. Omission of such loss would have failed to compensate for the injury suffered. The law contemplates full compensation for all damages ascertainable with reasonable certainty; and, as the profits which would have been acquired, but for plaintiff's breach of the contract, were definitely proven, there is no reason for denying recovery thereof.")

Four Seasons adequately proved its lost profits and should be awarded as damages the profits it reasonably expected to gain by completing the Project, yet was deprived of due to the Board's breach—$ 97,013.28.

2. Four Seasons did not fail to mitigate its damages.

While the District Court's comment that Four Seasons had the duty to mitigate damages is true, the Board had the burden to prove that Four Seasons failed to mitigate its damages. The Board did not carry this burden because—not only did it never raise the affirmative defense of failure to mitigate damages—it never produced any evidence to show that Four Seasons failed to mitigate its damages. Therefore, mitigation of damages is a non-issue and the District Court was incorrect to shift the burden to prove mitigation of damages onto Four Seasons

and use that issue in support of its denial of Four Seasons' breach of contract claim.

a. The defense bears the burden to prove failure to mitigate.

While Four Seasons had a duty to mitigate its damages, the Board had the burden of proof as to this issue. *See Hunter v. Bd. of Trs. of Broadlawns Med. Ctr.*, 481 N.W.2d 510, 517 (Iowa 1992) ("In a breach-of-contract suit, the defendant has the burden of proving that plaintiff could have mitigated her loss through a substitute transaction.") (citing *Stauter v. Walnut Grove Prods.*, 188 N.W.2d 305, 312 (Iowa 1971); *DeWaay v. Muhr*, 160 N.W.2d 454, 457 (Iowa 1968); Restatement (Second) of Contracts § 350 comment c (1981)).

The Board never raised the affirmative defense of failure to mitigate damages and produced no evidence showing that Four Seasons could have mitigated its lost profits through a substitute transaction of similar nature and caliber. *See id.* (citing *Barnum v. Nebergall*, 367 N.W.2d 317, 319 (Iowa App. 1985); Restatement (Second) of Contracts § 350 comment e, illustration 11 (1981)).

i. The Board never raised the affirmative defense of failure to mitigate damages.

"The defense of mitigation or avoidable consequences must be both pleaded and proven by the asserting party." *McHose v. Physician & Clinic Servs.*, 548

N.W.2d 158, 160 (Iowa Ct. App. 1996) (citing *R.E.T. Corp. v. Frank Paxton Co.*, 329 N.W.2d 416, 422 (Iowa 1983)). The Board never raised the affirmative defense of failure to mitigate damages in its pleadings. Where the special defense of mitigation of damages is not pleaded and proved, it is error for a trial court to apply mitigation principles in its ruling beyond the circumstances growing out of the plaintiff's testimony. *See McHose*, at 160–61 ("We determine the trial court erred because it applied mitigation principles without limiting its application to the circumstances growing out of plaintiff's testimony.")

Because the Board did not plead the affirmative defense of failure to mitigate damages and because the no evidence was elicited—from the Plaintiff or otherwise—having to do with mitigation of damages, the District Court erred by considering the issue of failure to mitigate damages.

ii. The Board produced no evidence showing that Four Seasons failed to mitigate its damages.

The Board failed to elicit any evidence that Four Seasons failed to mitigate its damages—either from its own witnesses or on cross-examination. Indeed, mitigation of its damages was not mentioned at all by anyone at any point in this case until the District Court raised the issue on its own accord in its Ruling. The District Court's commentary on mitigation was incorrect because there was no evidence showing that Four Seasons failed to mitigate its damages and because the

District Court erroneously shifted the burden from the Board onto Four Seasons to prove that it had attempted to mitigate its damages yet was unsuccessful. Because Iowa law places no such burden on Four Seasons, the District Court was wrong to use this point to attack the adequacy of Four Seasons' well-proven damages.

Because the Board had the burden to prove that Four Seasons failed to mitigate its damages, yet did nothing to plead or prove this issue, the District Court's determination that Four Seasons' damages were inadequate based on its duty to mitigate damages should be reversed. And because Four Seasons' damages were well proven, the District Court's finding that Four Seasons' damages were inadequate should be reversed and remanded with instructions to the District Court to award Four Seasons damages in the amount of $97,013.28 for its breach of contract claim against the Board.

III. Four Seasons proved its breach of contract claim.

At trial, the admissible evidence—including the Board's conclusively established admissions—showed that the Board breached its contract with Four Seasons. Further, under Iowa caselaw, the Board was able to waive Four Seasons' submission of a five percent bid bond instead of the requested ten percent bid bond. And, as addressed above, contrary to the District Court's comment that Four Seasons' damages evidence was inadequate, Four Seasons provided uncontroverted evidence of the amount of its damages. Therefore, the District

Court's ruling denying Four Seasons' breach of contract claim should be reversed and the District Court should be ordered to enter judgment in favor of Four Seasons in the amount of $97,013.28.

A. Preservation of Error

Four Seasons preserved error as to its breach of contract claim by raising the issue in its pleadings, presenting evidence proving this claim at trial, and arguing for this claim in its Post-Trial Brief.

B. Scope and Standard of Review

The standard of review is for correction of errors at law when an appellate court reviews the judgment of a district court in a nonjury law case. *Bus. Consulting Servs.*, 703 N.W.2d at 429. Appellate courts are not bound by the trial court's application of legal principles or its conclusions of law. *Van Sloun*, 778 N.W.2d at 179. Because, after correcting the District Court's errors as to the Board's acceptance of Four Seasons' bid and the adequacy of Four Seasons' damages, the evidence presented before the District Court at trial proved Four Seasons' breach of contract claim, this Court should reverse the District Court's Ruling denying Four Seasons' breach of contract claim.

C. Argument

1. The Board breached its contract with Four Seasons.

In order to prevail on its breach of contract claim, Four Seasons had the burden to prove:

(1) The existence of a contract;

(2) The terms and conditions of the contract;

(3) That Four Seasons has performed all the terms and conditions required under the contract;

(4) The Board's breach of the contract in some particular way; and

(5) That Four Seasons has suffered damages as a result of the breach.

See Iowa Mortg. Ctr., L.L.C. v. Baccam, 841 N.W.2d 107, 110–11 (Iowa 2013).

Because all these elements have been satisfied by the evidence at trial—including the Board's conclusively established admissions—the District Court should have granted judgment in favor of Four Seasons on its breach of contract claim.

a. A contract existed between Four Seasons and the Board.

A contract existed between Four Seasons and the Board because the Board accepted Four Seasons' offer and because the amount of Four Seasons' bid bond is immaterial.

i. The Board accepted Four Seasons' offer.

"A contract requires offer, acceptance, and sufficiently definite terms to be enforced." *Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc.*, 762 N.W.2d 463, 475 (Iowa 2009). "Ordinarily, a municipality's advertisement for bids is a solicitation for offers, and does not itself constitute an offer." *Horsfield Constr.*, 653 N.W.2d at 568. "A bid generally constitutes an offer, and does not in itself constitute a contract." *Id.* "Once a municipality accepts a valid bid, such acceptance results in a binding contract, 'even though there may have been defective compliance with certain legal formalities.'" *Id.* at 568–69 (citing 64 C.J.S. *Municipal Corporations* § 926, at 127 (1999)).

"Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; but the circumstances may show that the agreements are preliminary negotiations." *Id.* at 570 (quoting Restatement (Second) of Contracts § 27 (1981)). "Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein." *Id.* at 571 (quoting Restatement (Second) of Contracts § 27

cmt. a. “This they may do orally or *by exchange of several writings*.” (emphasis added by court)).

“It is possible thus to make a contract the terms of which include an obligation to execute subsequently a final writing which shall contain certain provisions.” *Id.* “If parties have definitely agreed that they will do so, and that the final writing shall contain these provisions and no others, they have then concluded the contract.” *Id.*

In the present case, Four Seasons submitted a bid for the construction of the Project in response to the Board’s Notice to Bidders for the Project. Multiple contractors who had submitted bids relating to the Project were present at the meeting of the Jefferson County Conservation Board held on February 28, 2024. Ben Brueck, President of Four Seasons, was present at this meeting when the Board opened Four Seasons’ bid.

Four Seasons’ bid addressed all material terms relating to the construction of the Project. Four Seasons bid conformed in all material respects to the actual construction work proposed in the Board’s Notice to Bidders for the Project. At the February 28, 2024 Board meeting, the Board never determined that Four Seasons’ bid was non-responsive. No further material terms relating to the construction of the Project beyond the terms contained in Four Seasons’ bid remained to be negotiated after February 28, 2024.

On February 28, 2024, the Board assented to the material terms relating to the construction of the Project as contained in Four Seasons' bid. The Board has at all relevant times considered Four Seasons to be sufficiently qualified and able to perform the contract for the Project if it was awarded to Four Seasons. At the February 28, 2024 Board meeting, the Board accepted Four Seasons' bid. Mr. Brueck understood the Board's acceptance to mean that, based on his experience bidding many construction projects, the Board agreed to have Four Seasons complete the work for the Project according to the terms of the bid.

Under Iowa law, Four Seasons' bid constituted an offer, this offer contained all material terms, and the Board accepted this offer. *See Horsfield Constr.*, 653 N.W.2d at 568–69. Therefore, a binding contract was formed between Four Seasons and the Board. *See id.*

ii. The amount of Four Seasons' bid bond is immaterial.

Following the Board's acceptance of Four Seasons' offer, the Board refused to execute a contract for the Project with Four Seasons on the ground that Four Seasons' bid was non-responsive. The Board's determination that Four Seasons' bid was non-responsive was based solely on Four Seasons' bid bond being five percent—rather than the ten percent requested in the Board's Notice to Bidders for the Project.

"Bid bonds are a form of security which guarantees that the bidder who is awarded the contract will either enter into the contract and furnish any performance and payment bonds which are required under the conditions of the bid or contract, or that the bidder will pay damages to the owner arising from the bidder's refusal to enter into the contract." 5 Construction Law P 17.06 (2024). In contrast, "[t]he performance bond is intended to protect the owner from losses arising from the default of the contractor in the performance of the contract." 5 Construction Law P 17.07 (2024).

The Iowa Supreme Court's decision in *Tony Amodeo Co. v. Woodward* involved facts substantially similar to the present case. *See generally* 185 N.W. 94 (Iowa 1921). In *Tony Amodeo Co.*, the plaintiff-contractor attempted to argue that his bid was illegal and did not lead to an enforceable contract upon its acceptance because the certified check he provided to secure his entry into a contract for the work was only $1,000 rather than the ten percent of the amount of the bid that was requested in the published notice for the project. *See id.* at 94 ("Ten per cent of plaintiff's bid, according to his evidence, would be about $1,900."). In that case, "[t]he defendants claim[ed] that the town and the council waived the requirement that plaintiff should deposit a check equal to 10 per cent of his bid, and that plaintiff waived his right to a return of the check or its proceeds, and that he is estopped from claiming it." *Id.* at 95.

In its analysis, the *Amodeo* Court discussed that a prior case which had been partially overruled held that certain provisions involving the extent of the work and terms of payment were held to be mandatory and jurisdictional. *See id.* However, in discussing the sufficiency of the certified check—which is analogous to a bid bond—the Court noted that:

> "When plaintiff's bid was accepted, had he gone on and entered into the contract and given bond, the contract and bond would be the property owners' protection. The defect or discrepancy between the notice and the plans and specifications would be no concern of the property owners'. In other words, the notice, in so far as it relates to the amount of the check, is not mandatory, and is not one of the jurisdictional questions before enumerated in the statute, and essential to give the council power to contract. The matter complained of as to the size of the check is not an illegality of which the property owners could complain." *Id.* at 95–96 (emphasis added).

The *Amodeo* Court ultimately affirmed the trial court's judgment against the plaintiff-contractor. *Id.* at 96 ("As before stated, we think it clear that the reason plaintiff refused to enter into a contract was because his bid was too low. Had he entered into the contract, he would, by its performance, have lost much more than the amount of the check. As it is, the city has lost a considerable sum by reletting at a higher price because of plaintiff's failure to contract, and because of his failure to withdraw his bid and the check after he discovered the alleged mistake, and before his bid was accepted. Had he done the latter, he would have protected himself and the city as well. This disposes of the principal point in the case, and the one most relied upon.").

In the present case, had the Board and Four Seasons entered into a formal contract for the completion of the Project with Four Seasons providing the proposed performance bond for the Project, any discrepancy regarding the amount of the bid bond would have been of no concern to the Board. A five percent bid bond is not in violation of any Iowa statute. The amount of the bid bond with respect to the Project would not change in any way the work that was to be completed as part of the Project. The submission of a lower bid bond does not give a bidder a substantial advantage or benefit not enjoyed by other bidders. The public would not have been prejudiced had the Board allowed Four Seasons to post a performance bond and complete the Project according to its bid.

As the *Amodeo* Court refused to invalidate a contract based on a discrepancy in the amount given to secure a party's duty to formalize a contract and post a performance bond, this Court should similarly refuse to deem the contract between Four Seasons and the Board invalid based on Four Seasons' bid bond being only five percent.

b. The terms and conditions of the Contract are known.

A plaintiff must show the terms and conditions of the contract to prevail on a breach of contract claim. *See Iowa Mortg. Ctr., L.L.C.*, 841 N.W.2d at 110–11. In this case, Four Seasons' bid was the offer which the Board accepted. No further material terms relating to the construction of the Project beyond the terms

contained in Four Seasons' bid remained to be negotiated after February 28, 2024. The terms and conditions are therefore established in Four Seasons' bid. Therefore, the terms and conditions of the Contract in this case are established and known and this second element of Four Seasons' breach of contract claim is satisfied. *See Iowa Mortg. Ctr., L.L.C.*, 841 N.W.2d at 110–11.

c. Four Seasons has performed all requirements under the Contract.

The third element that a plaintiff must show to prevail on a breach of contract claim is that the plaintiff performed all terms and conditions under the contract. *See Iowa Mortg. Ctr., L.L.C.*, 841 N.W.2d at 110–11. After the February 28, 2024 Board meeting, Four Seasons acted in good faith in relation to the Board and the Project. After the February 28, 2024 Board meeting, Four Seasons did not prevent the satisfaction of any conditions relating to the Project which may have existed.

Based on these circumstances, Four Seasons performed all requirements of the Contract that it was able to and stood ready to perform the entire Project as agreed but for the Board's breach of the contract by repudiation and non-performance. *See Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 241 (Iowa 2001) ("Where one party to a contract repudiates the contract before the time for performance has arrived, the other party is relieved from its performance."

(citing Restatement (Second) of Contracts § 253(2) (1981); 13 Richard A. Lord, Williston on Contracts § 39:37, at 663 (4th ed. 2000)).

d. The Board breached the Contract by repudiation and non-performance.

The fourth element that a plaintiff must show to prevail on a breach of contract claim is that the defendant breached the contract in some particular way. *See Iowa Mortg. Ctr., L.L.C.*, 841 N.W.2d at 110–11. "Typically, 'repudiation consists of a statement that the repudiating party cannot or will not perform.'" *Homeland Energy Sols., LLC v. Retterath*, 938 N.W.2d 664, 697 (Iowa 2020) (quoting *Conrad Bros.*, 640 N.W.2d at 241).

The language of the statement 'must be sufficiently positive to be reasonably interpreted to mean that the party will not or cannot perform.'" *Id.* at 698 (quoting Restatement (Second) of Contracts § 250 cmt. b, at 273). However, 'language that is accompanied by a breach by non-performance may amount to a repudiation even though, standing alone, it would not be sufficiently positive.'" *Id.*

After the February 28, 2024 Board meeting, the Board refused to execute a contract for the Project with Four Seasons on the ground that Four Seasons' bid was non-responsive. The Board has accepted the bid of Leffler Dirtworks, LLC to perform the work on the Project. Thus, both the words and actions of the Board show that the Board breached the Contract by repudiation and non-performance. *See Homeland Energy Sols., LLC*, 938 N.W.2d at 697–98.

e. Four Seasons has suffered damages as a result of the Board's breach.

The fifth element that a plaintiff must show to prevail on a breach of contract claim is that the plaintiff suffered damages as a result of the breach. *See Iowa Mortg. Ctr., L.L.C.*, 841 N.W.2d at 110–11. Four Seasons expected to make a profit from completing the Project. Because the Board repudiated the Contract under which Four Seasons was to complete the Project, Four Seasons' expectation to make a profit has been frustrated. Therefore, Four Seasons has suffered damages as a result of the Board's breach and these damages were adequately proven by uncontroverted testimony to be in the amount of $97,013.28.

Because Four Seasons proved each element of its breach of contract claim against the Board, the District Court's Ruling denying Four Seasons' claim should be reversed and the matter should be remanded to the District Court with instructions to order judgment in favor of Four Seasons in the amount of $97,013.28.

CONCLUSION

Four Seasons is seeking appellate review of the Jefferson County District Court's Ruling in this matter because the District Court erred by considering evidence controverting the Board's conclusively established judicial admissions, by shifting Jefferson County Conservation Board's burden to prove failure to mitigate damages onto Four Seasons, and by denying Four Seasons' breach of contract claim.

Four Seasons rightfully relied on the judicial admission that the Board accepted its bid, yet the District Court failed to apply the rules of civil procedure. Four Seasons proved its damages, yet the District Court placed the burden to prove mitigation of damages on Four Seasons rather than the Board—who never alleged, proved, or argued mitigation of damages. And Four Seasons proved its breach of contract claim, yet the District Court denied it relief.

We have rules for a reason, and the rules support a judgment in favor of Four Seasons. Four Seasons now turns to this High Court to enforce the law and vindicate its reliance on the rules and respectfully requests that this Court reverse the District Court's Ruling denying Four Seasons' breach of contract claim and remand the matter and instruct the District Court to award judgment in favor of Four Seasons on its breach of contract claim in the amount of $97,013.28.

Respectfully submitted,

/s/ Frederic C. Hayer

Frederic C. Hayer, ICIS# AT0014986
ASPELMEIER, FISCH, POWER,
ENGBERG & HELLING, P.L.C.
321 N. Third Street
P.O. Box 1046
Burlington, IA 52601
Phone: 319-754-6587
Fax: 319-754-7514
E-mail: fhayer@seialaw.com

REQUEST FOR ORAL SUBMISSION

Appellant Four Seasons requests that this case be submitted with oral argument.

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of this Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon counsel of record below by EDMS on the 27th day of June, 2025.

/s/ Frederic C. Hayer
Frederic C. Hayer, ICIS# AT0014986

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type volume limitations of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because it has been prepared in proportionally spaced typeface using Times New Roman in 14-point font and contains 12,412 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Frederic C. Hayer
Frederic C. Hayer, ICIS# AT0014986