



AGENDA ITEM: J1U

**CITY OF WAUKEE, IOWA
CITY COUNCIL MEETING COMMUNICATION**

MEETING DATE: September 7, 2021

AGENDA ITEM: Consideration of approval of a resolution approving contract, bond [10-inch Gas Distribution Main 2021, Meredith/NW 10th Street Project]

FORMAT: Consent Agenda

SYNOPSIS INCLUDING PRO & CON:

FISCAL IMPACT INCLUDING COST/BENEFIT ANALYSIS: \$1,053,750.00

COMMISSION/BOARD/COMMITTEE COMMENT:

STAFF REVIEW AND COMMENT:

RECOMMENDATION: Approve the resolution approving contract and bond with Meade, Inc., of Willowbrook, IL, in the amount of \$1,053,750.00.

ATTACHMENTS: I. Proposed Resolution
II. Contract, Bond

PREPARED BY: Becky Schuett

REVIEWED BY:

RESOLUTION 2021-

RESOLUTION APPROVING CONSTRUCTION CONTRACT
AND BOND FOR THE 10-INCH PROJECT MEREDITH/NW
10TH ST. - 2021

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAUKEE, STATE
OF IOWA:

That the construction contract and bond executed and insurance coverage for the construction of certain public improvements described in general as the 10-inch Project Meredith/NW 10th St. - 2021, and as described in detail in the plans and specifications heretofore approved, and which have been signed by the Mayor and Clerk on behalf of the City be and the same are hereby approved as follows:

Contractor: Meade, Inc., of Willowbrook, IL
Amount of bid: \$1,053,750.00
Bond surety: Continental Casualty Company
Date of bond: August 23, 2021
Portion of project: All construction work

PASSED AND APPROVED this 7th day of September, 2021.

Mayor

ATTEST:

City Clerk

CONTRACT

CONTRACT NO. 10-Inch Project Meredith/NW
10th St. Gas Distribution Main
DATE August 23, 2021

THIS CONTRACT, made and entered into this, the 23rd day of August, 2020, by and between the City of Waukee, Iowa, by its Mayor, upon order of its City Council hereinafter called the "Owner", and Meade, Inc., hereinafter called the "Contractor".

WITNESSETH:

The Contractor hereby agrees to complete the work comprising the below referenced improvements as specified in the Contract Documents, which are officially on file with the City in the office of the Willowbrook headquarters. This contract includes all Contract Documents.

The term "Contract Documents" means and includes the following:

- A. Notice of Hearing and Letting
- B. Instructions to Bidders
- C. Proposal
- D. Bid Bond
- E. Contract
- F. Performance Bond
- G. Regulations of the Contract
- H. Supplemental Regulations
- I. Special Conditions
- J. Detailed Specifications
- K. Plans Numbered ___ through ____
- L. Standard Drawings
- M. Addenda Number _____ through _____
- N. Change Orders Number _____ through _____
- O. Notice to Proceed

The work under this contract shall be constructed in accordance with the current

editions of the City of Waukee Specifications for Public Improvements and SUDAS Standard Specifications, and as further modified by the supplemental specifications and special provisions included in said contract documents. The Contractor further agrees to complete the work in strict accordance with said contract documents, and to guarantee the work as required by law, for the time required in said contract documents, after its acceptance by the City.

This contract is awarded and executed for completion of the work specified in the contract documents for the bid prices shown on the Contract Attachment – Item 1: Bid Items, Quantities, and Prices, which were proposed by the Contractor in its proposal submitted in accordance with the Notice to Bidders and Notice of Public Hearing for the following described improvements:

Construct 10-inch gas main including all labor, materials and equipment necessary for excavation, backfill and sitework, poly pipe installation, valve installation, regulator station installation, tie-ins, purging and abandonment; surface restoration and miscellaneous associated work including cleanup.

The Contractor agrees to perform said work for and in consideration of the City's payment of the bid amount of One Million Twenty Four Thousand Two Hundred Ten DOLLARS (\$ 1,024,210.00) which amount shall constitute the required amount of the performance, maintenance, and payment bond. The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written notice to proceed by the City and to fully complete the project by November 24, 2021; and to pay damages for noncompliance with said completion provisions at the rate of Five hundred dollars (\$ 500.00) for each calendar day thereafter that the work remains incomplete.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument, in triplicate on the date first shown written.

CITY OF WAUKEE, IOWA

CONTRACTOR

By _____
Courtney Clarke, Mayor

Meade, Inc.

Contractor

(Seal)
ATTEST:

By 

Signature

Rebecca D. Schuett, City Clerk

Vice President

Title

FORM APPROVED BY:

625 Willowbrook Center Parkway

Street Address

Attorney for Jurisdiction

Willowbrook, IL 60527

City, State, Zip Code

708-588-2500

Telephone

ATTEST: 

Group Secretary

CONTRACTOR PUBLIC REGISTRATION INFORMATION TO Be Provided By:

CONTRACT -3

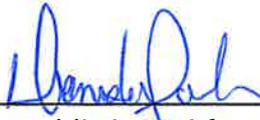
1. All Contractors: The Contractor shall enter its Public Registration Number _____ issued by the Iowa Commissioner of Labor pursuant to Section 91C.5 of the Iowa Code.
2. Out of State Contractors:
 - A. Pursuant to Section 91C.7 of the Iowa Code, an out-of-state contractor, before commencing a contract in excess of five thousand dollars in value in Iowa, shall file a bond with the division of labor services of the department of workforce development. It is the contractor's responsibility to comply with said Section 91C.7 before commencing this work.
 - B. Prior to entering into contract, the designated low bidder, if it is a corporation organized under the laws of a state other than Iowa, shall file with the Engineer a certificate from the Secretary of the State of Iowa showing that it has complied with all the provisions of Chapter 490 of the Iowa Code, or as amended, governing foreign corporations.

Note: All signatures on this contract must be original signatures in ink; copies, facsimile, or electronic signatures will not be accepted.

CORPORATE ACKNOWLEDGMENT:

State of Illinois)
 Cook) SS
 _____ County)

On this 19th day of August, 2021, before me, the undersigned, a Notary Public in and for the State of Illinois, personally appeared Joe Van Gundy III and Joan T. Maselli, to me known, who, being by me duly sworn, did say that they are the Vice President and Group Secretary, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that Joe Van Gundy III and Joan T. Maselli acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



 Notary Public in and for the State of Illinois
 My commission expires 6-5, 2022



PARTNERSHIP ACKNOWLEDGMENT:

State of _____)
) SS
_____ County)

On this ___ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ to me personally known, who, being by me duly sworn, did say that the person is one of the partners of _____, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and partner and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership, by it and by the partner voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____, 20__

INDIVIDUAL ACKNOWLEDGMENT:

State of _____)
) SS
_____ County)

On this ___ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ AND _____ to me personally known to be the identical person(s) named in and who executed the foregoing instrument and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

Notary Public in and for the State of _____
My commission expires _____, 20__

PERFORMANCE, PAYMENT, AND MAINTENANCE BOND

SURETY BOND NO. 30135680

KNOW ALL BY THESE PRESENTS:

That we, Meade, Inc., as Principal (hereinafter the "Contractor" or "Principal" and Continental Casualty Company, as Surety are held and firmly bound unto City of Waukee, Iowa, as Obligee (hereinafter referred to as "the Owner"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of One Million Twenty Four Thousand Two Hundred Ten and 00/100 dollars (\$ 1,024,210.00), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor entered into a contract with the Owner, bearing date the 19th day of August, ~~2020~~, 2021 hereinafter the "Contract") wherein said Contractor undertakes and agrees to construct the following described improvements:

Natural gas pipeline construction, including all labor, non-owner supplied materials and equipment necessary for a new 8-inch sectionalizing valve, 4-inch regulator station, approx. 31 linear feet of 10-inch HDPE, tie-ins, locations stations, valves, surface restoration and miscellaneous associated work, including cleanup

and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents. Provided, however, that one year after the date of acceptance as complete of the work under the above referenced Contract, the maintenance portion of this Bond shall continue in force but the penal sum for maintenance shall be reduced to the sum of _____ DOLLARS (\$ _____), which is the cost associated with those items shown on the proposal and in the Contract that require a maintenance bond period in excess of one year.

It is expressly understood and agreed by the Contractor and Surety in this bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. PERFORMANCE: The Contractor shall well and faithfully observe, perform, fulfill,

and abide by each and every covenant, condition, and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the Owner from all outlay and expense incurred by the Owner by reason of the Contractor's default of failure to perform as required. The contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.

2. PAYMENT: The Contractor and the Surety on this Bond hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price the Owner is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Chapter 573 of the Iowa Code, which by this reference is made a part hereof as though fully set out herein.

3. MAINTENANCE: The Contractor and Surety on this Bond hereby agree, at their own expense:

- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) year (s) from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
- B. To keep all work in continuous good repair; and
- C. To pay the Owner's reasonable costs of monitoring and inspection to assure that any defects are remedied, and to repay the Owner all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the Owner at the time such work was accepted.

PERFORMANCE, PAYMENT, AND MAINTENANCE BOND

1. **GENERAL:** Every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
 - A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
 - B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than 20% of the total contract price, and that this bond shall then be released as to such excess increase; and
 - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the damage penalty is being charged against the Contractor.

The Contractor and every Surety on the bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:

- D. That no provision of this Bond or of any other contract shall be valid that limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
- E. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Owner including interest, benefits, and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys' fees (including overhead expenses of the Owner's staff attorneys), and all costs and expenses of litigation as they are incurred by the Owner. It is intended the Contractor and Surety will defend and indemnify the Owner on all claims made against the Owner on account of Contractor's failure to perform as required in the Contract and Contract Documents that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Owner will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

In the event the Owner incurs any "outlay and expense" in defending itself against any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Owner whole for all such outlay and expense, provided that the Surety's obligation under this bond shall not exceed 125% of the penal sum of this bond.

PERFORMANCE, PAYMENT, AND MAINTENANCE BOND

In the event that any actions or proceedings are initiated regarding this Bond, the parties agree that the venue thereof shall be Dallas County, State of Iowa. If legal action is required by the Owner to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Owner, the Contractor and the Surety agree, jointly, and severally, to pay the Owner all outlay and expense incurred therefor by the Owner. All rights, powers, and remedies of the Owner hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers, and remedies given to the Owner, by law. The Owner may proceed against surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action(s) or not.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a work, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

PERFORMANCE, PAYMENT, AND MAINTENANCE BOND

Project No. _____

Witness our hands, in triplicate, this 23rd day of August, 2021

SURETY COUNTERSIGNED BY:

N/A

Signature of Agent

Printed Name of Agent

Company Name

Company Address

City, State, Zip Code

Company Telephone Number

PRINCIPAL:

Meade, Inc.

Contractor

By: 
Signature

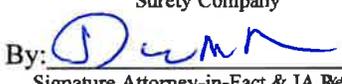
Vice President

Title

SURETY:

Continental Casualty Company

Surety Company

By: 
Signature Attorney-in-Fact & IA Resident Agent
Nonresident

Donna M Planeta

Printed Name of Attorney-in-Fact & IA Resident Agent
Nonresident

FORM APPROVED BY:

Attorney for Owner

Company Name

Company Address

City, State, Zip Code

Company Telephone Number

NOTE:

1. All signatures on this performance, payment, and maintenance bond must be original signatures in ink; copies, facsimile, or electronic signatures will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.

4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.

NOTARY ACKNOWLEDGMENT OF SURETY:

State of Connecticut

County of Hartford ss.

On this the 23rd day of August, 2021, before me, Timothy S. Huffman, the undersigned officer, personally appeared Donna M Planeta, known to me (or satisfactorily proven) to be the person whose name is subscribed as Attorney-In-Fact for Continental Casualty Company, and acknowledged that s/he executed the same as the act of his/her principal for the purposes therein contained.

In witness whereof I hereunto set my hand.



Signature of Notary Public

Date Commission Expires: February 28, 2026

Timothy S. Huffman

Printed Name of Notary

TIMOTHY S. HUFFMAN
NOTARY PUBLIC · CT 183092
My Commission Expires Feb. 28, 2026

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Donna M Planeta, Joshua Sanford, Aimee R Perondine, Michelle Anne McMahon, Rebecca M Josephson, Bryan M Caneschi, Bethany Stevenson, Individually

of Hartford, CT, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 23rd day of July, 2021.



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

Paul T. Bruflat

Paul T. Bruflat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 23rd day of July, 2021, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.



My Commission Expires March 2, 2026

M. Bent

M. Bent Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 23rd day of August, 2021.



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Johnson

D. Johnson Assistant Secretary

Form F6853-4/2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF CONTINENTAL CASUALTY COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company at a meeting held on May 12, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of Continental Casualty Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. “

ADOPTED BY THE BOARD OF DIRECTORS OF NATIONAL FIRE INSURANCE COMPANY OF HARTFORD:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of National Fire Insurance Company of Hartford.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. “

ADOPTED BY THE BOARD OF DIRECTORS OF AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of American Casualty Company of Reading, Pennsylvania.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. “

REGULATIONS OF THE CONTRACT

WAUKEE, IOWA

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1. GENERAL STATEMENT

- 1.1 It is expressly understood and agreed that the Contract Documents comprised of the Notice of Hearing and Letting, Instructions to Bidders, Regulations of the Contract, Proposal, Contract, Supplemental Regulations, Performance Bond, Statutory Bond, Special Conditions, Detailed Specifications, Plans, all Addenda thereto issued prior to the time of opening of Bids for the work, all of which are hereto attached, Approved Change Orders, Notice to Proceed, and other Drawings, Specifications, and engineering data which may be furnished by the Contractor and approved by the Owner, together with such additional Drawings which may be furnished by the Engineer from time to time as are necessary to make clear and to define in greater detail the intent of the Specifications and Drawings.
- 1.2 That several parts of the Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of

the Documents is to include the furnishing of all materials, labor, tools, equipment and supplies necessary for completion of the contract obligations. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards. Notwithstanding Section 1.1 of the Special Conditions, in the event of a conflict between any of the contract documents, the Contractor is to provide the greater quantity and/or better quantity, unless otherwise directed in writing by the Owner or Engineer.

- 1.3 The Contract shall be executed in Dallas County in the State of Iowa. Five copies of the Contract Documents shall be prepared, each containing an exact copy of the Contractor's Proposal as submitted, the Performance Bond properly executed, a Statutory Bond where required, and the Documents shall be filed as follows: Two with the Owner, One with the Contractor, One with the Engineer, One with Bonding Company.

2 Definitions

- 2.1 Wherever any work or expression in this article, or pronoun used in its stead, occurs in these Contract Documents, it shall have and is mutually understood to have the meaning herein given:

2.1.1 "Contract" or "Contract Documents" shall include all of the Documents enumerated in the previous article.

2.1.2 "Owner", "Purchaser", shall mean the party entering into Contract or duly authorized officers or agents of the owner.

2.1.3 "Contractor" shall mean the party entering into Contract for the performance of the work covered by this Contract and duly authorized agents or legal representatives of the Contractor.

2.1.4 "Engineer" shall mean the Engineer or Engineers who have been employed by the Owner for this work, or their duly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.

2.1.5 "Inspector" shall mean the engineering or technical inspector or inspectors duly authorized by the Owner, limited to the particular duties entrusted to them.

2.1.6 "Date of Award Contract" or words equivalent thereto, shall mean the date upon which the Successful Bidder's Proposal is accepted by the Owner.

2.1.7 "Day" or "Days", unless herein other expressly defined, shall mean a calendar

day or days of twenty-four (24) hours each.

2.1.8 "The Work" shall mean the work to be done and the equipment, supplies, materials and labor to be furnished under this Contract, unless some other meaning is indicated by the context.

2.1.9 "Plans" or "Drawings" shall mean and include all Drawings which may have been prepared by the Engineer as a basis for proposals, all Drawings submitted by the Successful Bidder with his Proposal and by the Contractor to the Owner, if and when approved by the Engineer, and all Drawings submitted by the Owner to the Contractor during the progress of the work as provided for therein.

2.1.10 Whenever in these Contract Documents the words, "as ordered", "as directed", "satisfactory", or words of like effect and import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Owner or Engineer.

2.1.11 Similarly the words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactory", or words of like effect and import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Owner and Engineer.

2.1.12 Whenever the statement is made in these Contract Stipulations containing the expression "it is understood and agreed", or an expression of the like import, such expression means the mutual understanding and agreement of the Contractor and Owner.

2.1.13 Wherever the words, "Notice to Bidders" appear in these Specifications or Contract Documents, there should be substituted therefore the words, "Notice of Hearing and Letting".

3 CONTRACTOR OBLIGATIONS

- 3.1 It is understood and agreed that the Contractor, by careful examination, has been satisfied as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of the equipment and facilities needed preliminary to and during the prosecution of the work, the general local conditions, and all other matters which can in any way affect the work under this Contract. No verbal agreement or conversation with any officer, agent, or employee of the Owner, either before or after the execution of the Contract, shall effect or modify any of the terms of obligations herein contained.

4 ENGINEER'S OBLIGATIONS

- 4.1 The Engineer shall have general supervision of the work as representative of the Owner. The Engineer shall have authority to direct the program of the construction insofar as the proper execution of the Contract is affected and to the extent that the forces of labor may be increased or decreased by the Engineer's order to insure the execution of the Contract in the time and in the manner prescribed.
- 4.2 All work performed under this Contract shall be done in a first-class manner, and done to the satisfaction of the Owner. The Owner shall in all cases determine the amount, quality, acceptability, and fitness of the several kinds of work and materials herein specified. The Owner shall decide all questions which may arise as to the fulfillment of the terms of the Contract by the Contractor, or as to the intent or purpose of the Contract.
- 4.3 The Engineer shall, within a reasonable time after presentation, make decisions in writing on claims arising between the principals of the Contract and shall make interpretations of the Plans and Specifications. Such decisions and interpretations shall be regarded as final. In case of disagreements on decisions recourse may be taken to arbitration as hereinafter provided.
- 4.4 Any plan or method of work suggested by the Engineer, or other representative of the Owner, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor; and the Engineer and the Owner will assume no responsibility thereof.

5 BOND

- 5.1 Coincident with the execution of the Contract and Agreement, the Contractor shall furnish a good and sufficient surety bond in full amount of contract sum. This surety bond, executed by the Contractor to the Owner, shall guarantee:
(a) for the faithful performance and completion of the work in strict accordance with the terms of the Contract Documents; (b) the payment of all bills and obligations arising from this Contract which might in any manner become a claim against the Owner; (c) for payment to the Owner of all claims due or which may become due by the terms of the Contract as well as by reason of any violation thereof by the Contractor; (d) for the protection of the Owner against all suits and claims for infringements of the patent right and/or

processes; for the period of four (4) years from and immediately following the completion of said Contract and acceptance thereof by the Owner of all improvements, the payment to the Owner or the Owner's successor or assigns for all damage, loss and expense which may occur to the Owner, the Owner's successor or assigns by reason of defective materials used, or by reason of defective workmanship done, in the furnishing of materials and equipment in performance of said Contract, or in lieu thereof the Owner, the Owner's successors or assigns, may require the Contractor to maintain such items in need of repair for the said periods specified therein.

- 5.2 All provisions of the Bond shall be complete and in full accordance with the statutory requirements. The Bond shall be executed with the proper sureties through a company licensed and qualified to operate in the state and approved by the Owner. The Bond shall be signed by an agent resident in the State of Iowa and date of Bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract, the surety on the Contractor's Bond becomes irresponsible, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contract may be suspended, all payments or money due the Contractor withheld, and the Contract completed as hereinafter provided.

6 INSURANCE

6.1 General

6.1.1 The Contractor shall purchase and maintain insurance to protect the Contractor, the Engineer and Owner against all hazards enumerated herein. All policies shall be in the amounts, form and companies satisfactory to the Owner.

6.1.2 All Certificates of insurance required herein shall state that thirty (30) days written notice will be given to the Owner before the Policy is canceled or changed. All certificates of insurance shall be delivered to the Owner and Engineer prior to the time that any operations under this Contract are started.

6.1.3 All of said Contractor's certificates of insurance shall be written by an insurance company authorized to do business in the State of Iowa.

- 6.2 The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the contract, whether such operations be by the Contractor or by any of them, or by anyone for whose acts any of them may be liable.

6.2.1 Claims under workers' or workmen compensation, disability benefit and other similar employee benefit acts;

6.2.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

6.2.3 Claims for damages because of the Contractor's injury, sickness or disease, or death of any person other than the Contractor's employees;

6.2.4 Claims for damages insured by usual personal injury liability coverage which are sustained.

A. By any person as a result of an offense directly related to the employment of such person by the Contractor, or

B. By the other person;

6.2.5 Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and,

6.2.6 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

6.3 Limits of Liability

6.3.1 The insurance required by Paragraph 6 shall be written on an occurrence form of policy for not less than any limits of liability specified herein, or required by law, whichever is greater:

General Liability; contractually, independent Contractors, Broad Form Property damage	\$1,000,000 (including single limit per occurrence)
Personal Injury, Underground Explosion nad Collapse	\$1,000,000 (Aggregate hazards)
Automobile Liability (including all owned, non-owned and hired autos) single limit	\$2,000,000 combined

failure to give directions or instructions by the Engineer, the Engineer's agents or employees providing such giving or failure to give are the primary cause of the injury or damage.

- 6.5 Contractor's Insurance for other Losses for the consideration in this agreement heretofore stated, in addition to the Contractor's other obligations, the Contractor assumes full responsibility for all loss or damage from any cause whatsoever to any tools owned by the mechanics, any tool machinery, equipment, or motor vehicles owned or rented by the Contractor, the Contractor's agents, Subcontractors, materials owned or rented by the Contractor, the Contractor's agents, Subcontractors, material suppliers or their employees, tool sheds or other temporary structures, scaffolding and staging, protective fences, bridges and sidewalk hooks. The Contractor shall also assume responsibility for all loss or damage caused by, arising out of or incident to larceny, theft, or any cause whatsoever (except as hereinbefore provided) to the structure on which the work of this Contract, and any modifications, alterations, enlargement thereto, is to be done, and to the following items and labor connected or to be used as a part of the permanent materials and supplies necessary to the work.
- 6.6 Notification in Event of Liability of Damage Upon the occurrence of any event, the liability for which is herein assumed, the Contractor agrees to forthwith notify the Owner, in writing, such happening, which notice shall forthwith give the details as to the happening, the cause as far as can be ascertained, the estimate of loss or damage done, the names of witnesses, if any, and stating the amount of any claim.

7 ASSIGNMENT OF CONTRACT

- 7.1 The Contractor shall not assign or transfer this Contract, nor sublet it as a whole, without the written consent of the Owner and of the Surety on the Contractor's Bond. Such consent of Surety, together with copy of assignment shall be filed with the Engineer. No assignment, transfer of subletting, even though consented to, shall relieve the Contractor of the Contractor's liabilities under this Contract. Should any assignee fail to perform the work undertaken by the Assignee in a satisfactory manner, the Owner may at the Owner's option annul and terminate Assignee's Contract.

8 SUB-CONTRACTS

- 8.1 The Contractor shall, as soon as practicable after the signing of the Contract, notify both the Owner and the Engineer in writing of the names of Subcontractors proposed for the work and shall not employ any that the Owner or the Engineers may within a reasonable time object to as incompetent or unfit.
- 8.2 The Contractor agrees that the Contractor is as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- 8.3 Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.
- 8.4 No officer, agent or employee of Owner, including the Engineer, shall have any power or authority whatsoever to bind the Owner or incur any obligation in its behalf to any Subcontractor, material supplier, or other person in any manner whatsoever.

9 OTHER CONTRACTS

- 9.1 The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and execution of their work, and shall properly connect and coordinate the Contractor's work with theirs.
- 9.2 If any part of the Contractor's work depends for proper execution or results on the work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defect in such work that renders it unsuitable for such proper execution and results.
- 9.3 The Contractor's failure to inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other Contractor's work after the execution of the Contractor's work.
- 9.4 Wherever work being done by the Owner's forces or by other Contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Engineer, in order to secure the completion of the various portions of the work in general harmony.

10 LEGAL RESTRICTIONS

10.1 The Contractor shall procure at the Contractor's own expense all necessary licenses and permits of a temporary nature and shall give due and adequate notice to those in control of all licenses and easements for permanent structure or permanent changes in existing facilities shall be provided by the Owner unless otherwise specified. The Contractor shall have all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn or specified.

11 ROYALTIES AND PATENTS

11.1 It is agreed that all royalties for patents or patent infringement claims, whether such patents are for processes or devices, that might be involved in the construction or use of the work, shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and shall be liable for any damages or claim for patent infringements, and the Contractor shall at the Contractor's own expense, defend any and all suits or proceedings that may be instituted at any time against the Owner for infringement or alleged infringement of any patent or patents involved in the work, and in case of an award of damages, the said Contractor shall pay such award; final payment to the Contractor by the Owner will not be made while any such suits or claims remain unsettled.

12 SCOPE AND INTENT OF SPECIFICATIONS AND PLANS

12.1 General

12.1.1 These Specifications and Project Plans are intended to supplement, but not necessarily duplicate each other, and together constitute one complete set of Specifications and Plans so that any work exhibited in the one and not in the other, shall be executed just as if it has been set forth in both, in order that the work shall be completed according to the complete design of the Engineer.

12.1.2 Should anything be omitted from the Specifications and Plans which is necessary to a clear understanding of the work, or should it appear various instructions are in conflict, then the Contractor shall secure written instructions from the Engineer before proceeding with the construction affected by such omissions or discrepancies. It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning and intent of the Contract, Specifications and Plans.

12.2 Figures Dimensions to Govern

12.2.1 Dimensions and elevations shown on the Plans shall be accurately followed, even though they differ from scaled measurements. No work shown on the Plans, the dimensions of which are not indicated, shall be executed until the required dimensions have been obtained from the Engineer.

12.3 Contractor to Check Plans and Schedules

12.3.1 The Contractor shall check all dimensions, elevations and quantities shown on the Plans and schedules given to the Contractor by the Engineer, and shall notify the Engineer of any discrepancy between the Plans and the conditions on the ground, or any error or omissions in the plans, or in the layout as given by stakes, points, or instructions, which the Contractor may discover in the course of the work. The Contractor will not be allowed to take advantage of any error or omission in the Plans or Contract Documents, as full instructions will be furnished by the Engineer should error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

12.3.2 The apparent silence of the Plans and Specifications as to any detail or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practices, as accepted by the particular trades or industries involved, shall be used.

13 SUPERVISION

13.1 The Owner may appoint or employ (either directly or through the Engineer) such engineering inspectors as the Owner may deem proper, to inspect the materials furnished and the work performed under this Contract, and to see that the said materials are furnished, and the said work performed, in accordance with the Plans and Specifications therefore.

13.2 The Contractor shall furnish all reasonable aid and assistance required by the Engineer, or by the Supervisors or Inspectors, for the proper inspections and examination of the work and all parts therefore.

13.3 The Contractor shall regard and obey the directions and instructions of the Engineer, or by the Supervisors or Inspectors, for the proper inspection and examination of the work and all parts thereof.

13.4 The Contractor shall regard and obey the directions and instructions of the Engineer, or any Supervisor or Inspector so appointed, when the same are consistent with the obligations of this Contract and the Specifications

therefore, provided, however, that should the Contractor object to any order given by any subordinate Engineer, Supervisor, or Inspector, the Contractor may make written appeal to the Engineer for his decision.

- 13.5 Engineering Inspectors, and other properly authorized representative of the Owner or Engineer shall be free at all times to perform their duties, and intimidation or attempted intimidation of anyone of them by the Contractor or by any of the Contractor's employees shall be sufficient reason, if the Owner so decides to annul the Contract.
- 13.6 Such inspection shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Plans and Specifications or any modifications thereof as herein provided, and work not so constructed shall be removed and made good by the Contractor at the Contractor's own expense, and free of all expense to the Owner, whenever so ordered by the Engineer, without reference to any previous oversight or error in inspection. Any defective material or workmanship may be rejected by the Engineer at any time before the final acceptance of the work, even though the same may have been previously overlooked and estimated for payment.
- 13.7 Inspector shall have authority subject to the final decision of the Engineer to condemn and reject any defective work or material and to suspend the work when the same is not being properly done.
- 13.8 All condemned work shall be promptly taken out and replaced by satisfactory work; all condemned materials shall be promptly removed from the vicinity of the work. Should the Contractor fail or refuse to comply with instructions in this respect the Owner may, upon certification by Engineer, withhold payment or proceed to terminate Contracts as herein provided.
- 13.9 Re-examination of questioned work may be ordered by the Engineer, and if so ordered, the work must be uncovered by the Contractor. If such work be found done in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the Contract Documents, the Contractor shall pay such cost, unless the Contractor shall show that defect in the work was caused by another Contractor of the Owner and in that event the Owner shall pay the cost.
- 13.10 The Contractor shall furnish samples for testing purposes of any material required by the Engineer, and shall furnish any information required concerning the nature or source of any material which the Contractor proposes to use. Laboratory tests are to be made as directed by the City

Engineer and the cost to be paid by the Owner.

14 LINE AND GRADE

- 14.1 All construction work shall be done to the lines and grades shown on the Plans. The Engineer will establish on the site horizontal and vertical control bench marks as shown on the Plans. Detailed survey and staking for location and grade of individual structures or other construction, as well as measurements and elevations within structures shall be performed by the Contractor.
- 14.2 For the construction of sewers, water lines, street and other types of lines or route work, the Engineer will establish on the site horizontal and vertical control bench marks, as shown on the Plans, with reference to dimensions thereto from which the work may be laid out by the Contractor.
- 14.3 Consult Special Conditions for any exceptions to above requirements concerning detailed survey and staking applying to this particular contract. In any case, all such detailed survey and stake out shall be checked by the Contractor who shall assume full responsibility for the accuracy and correctness thereof.
- 14.4 In all cases, the Contractor shall provide without extra compensation, competent workers and the necessary tools, and other materials required for proper checking of the work.
- 14.5 The Contractor shall without extra compensation furnish competent workers and the necessary tools to make all test holes and exploration required at anytime for the purpose of determining the location of existing structures beneath the ground surface which might conflict or interfere with this work.
- 14.6 The Contractor shall carefully preserve all monuments, reference points, stakes and bench marks set by the Engineer, and in case of destruction of same through carelessness or negligence on the part of the Contractor, he will be charged with the resulting expense of replacement and responsibility for any mistakes or loss of time caused thereby.

15 SUPERINTENDENCE

- 15.1 The Contractor shall keep on the project, during its progress, a competent Superintendent and any necessary assistants, all satisfactory to the Engineer. The Superintendent shall represent the Contractor in the Contractor's absence and all directions given to the Superintendent shall be binding as if given to

the Contractor.

15.2 The Contractor shall provide proper tools and equipment and the services of all workers, mechanics, trades people, and other employees necessary in the construction and execution of the work contemplated and outlined herein. The employees of the Contractor shall be competent and willing to perform satisfactorily the work required of them. Any employee who is disorderly, intemperate or incompetent or who neglects or refused to perform his work in a satisfactory manner, shall upon the request of the Engineer, be promptly discharged from the project and shall not be re-employed except with the Engineer's consent.

15.3 It is called particularly to the Contractor's attention that only first class workmanship will be acceptable.

16 PROTECTION OF WORK

16.1 The Contractor shall continuously maintain adequate protection of all the Contractor's work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. The Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents. The Contractor shall provide and maintain all passage ways, guard fences, lights and other facilities for protection required by public authority of local conditions.

16.2 In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor without special instruction or authorization from the Engineer, is hereby permitted to act at the Contractor's discretion to prevent such threatened loss or injury, and the Contractor shall so act, without appeal, if so instructed or authorized. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement or arbitration.

16.3 Whenever, in the opinion of the Engineer, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the work to be constructed under this Contract, or of adjacent structures or property which may be injured by the processes of construction on account of such neglect, and whenever, in the opinion of the Engineer, an emergency shall arise and immediate action shall be considered necessary in order to protect the public or private, personal or property interest, then the Engineer, with or without notice to the Contractor, may provide suitable protection to the said

interest by causing such work to be done and material to be furnished and placed as the Engineer may consider necessary and adequate.

16.4 The cost and expense of such work and material so furnished shall be borne by the Contractor, and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency work under the direction of the Engineer shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken by the Engineer.

17 SAFETY REGULATIONS

17.1 Notwithstanding any other provisions to the contrary, the Contract Documents shall be subject to the applicable provisions of the Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 91-596, 84 Stat. 1590, 29 U.S.C. 651-678; and Iowa Code Chapter 88; and all lawful regulations and rules pursuant thereto.

18 MATERIALS AND WORKMANSHIP

18.1 The Contractor hereby guarantees the work in connection with this Contract against faulty materials or poor workmanship during the period of time, as set out in the Notice after the date of completion and acceptance of the Contract.

18.2 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be new, merchantable, of good quality, and that the Work will be free from defects, and that the Work will conform to the Contract Documents.

18.3 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the workmanship will be free from defects not inherent in the quality required or permitted, that the workmanship will comply with all applicable laws, building codes, rules and regulations, and that the workmanship will conform to the requirements of the Contract Documents.

19 SHOP DRAWINGS

19.1 The Contractor shall furnish the Engineer with duplicate copies of all shop and erection Drawings for preliminary approval. These Drawings shall include the Drawings prepared on structural and reinforcing steel, special layout, Drawings

of equipment or machinery purchased under this Contract, and any other supplementary Drawings required in the prosecution of the work. One copy shall be returned to the Contractor for correction and one copy retained by the Engineer for office reference. After correction, the Contractor shall submit five (5) corrected copies to the Engineer for final approval and distribution to all interested parties. No material or equipment shall be used or installed until such formal approval is received by the Contractor.

19.2 The purpose of having shop and erection Drawings checked and approved by the Engineer are two-fold:

19.2.1 To assure the compliance with the purpose and intent of the Plans and Specifications.

19.2.2 To assist the Contractor in interpreting the Plans and Specifications so as to eliminate mistakes in the material or equipment actually shipped to the site of the work.

19.3 The formal approval given to the Contractor is to be considered as in compliance with these purposes and in no manner shall be construed so as to relieve the Contractor from any liability or responsibility for proper construction or compliance with the Plans and Specifications.

20 USE OF COMPLETED WORK

20.1 The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions as may not have expired; but such taking, possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents.

21 CHANGED WORK

21.1 The Owner, without invalidating the Contract, may order additional work to be done in connection with the Contract, or may alter or deduct from the work, the contract sum to be adjusted accordingly. All such work shall be executed under the conditions of the original Contract and subject to the same inspection and test as though therein included.

21.2 Provided, however, that any additional, omitted or changed work shall not be ordered, undertaken or commenced until after the consent has been obtained in writing of the Contractor's construction surety bonds persons, except minor

changes not inconsistent with the general purpose of the Contract not involving costs or substitutions of materials.

21.3 The Owner shall have authority, by verbal instructions, to make minor changes in the work, not involving cost, and not inconsistent with the purposes of the work. Otherwise, except in an emergency endangering life or property, all extra work or changes shall be done as ordered in writing by the Owner, which order shall state the location, character, amount, and method of compensation. No extra work or change shall be made unless in pursuance of such written order by the Owner, and no claim for an addition to the Contract sum shall be valid unless so ordered. The adjustment to the Contract sum for any such extra work or change shall be determined in one or more of the following ways:

21.3.1 By a Lump Sum Price agreed upon prior to starting the additional or changed work.

21.3.2 By Unit Prices named in the Proposal or as agreed upon prior to starting the additional or changed work.

21.3.3 By cost plus a fixed fee, the latter agreed upon prior to starting the additional or changed work.

21.3.4 By cost plus percentage, the latter agreed upon prior to starting the additional or changed work.

21.4 "Cost" in methods (21.3.3) and (21.3.4) shall include all labor, materials, power fuel and rental on major items of equipment. The Contractor shall keep and present in such forms as the Engineer may direct, a correct account of the several items of cost together with vouchers. This definition and requirement applies equally to work done by Subcontractors.

21.5 Under method (21.3.4), compensation or adjustment for work done by Subcontractors shall be computed on the same basis as if done by the Contractor except that ten percent (10%) shall be added to the amount or charged by the Subcontractor.

21.6 The above percentages shall be understood to include all other costs and compensation such as insurance, small tools, superintendence, office and other overhead costs and profit. Rental on equipment shall be charged against the additional or changed work only for the actual time which the equipment is used specifically thereof, and will be charged according to the current schedule of the Associated General Contractors of America, whether

owned or rented by the Contractor. Transportation charges necessarily incurred in connection with equipment authorized by the Engineer for use on the extra work which is not already on the job will be charged.

21.7 Changed work shall be adjusted considering separately the parts of the work added and the parts omitted. Amount of adjustment for parts omitted shall be estimated at time omission of work is authorized and the agreed adjustment will be deducted from final quantities.

21.8 Statements for additional or changed work shall be rendered by the Contractor not later than fifteen (15) days after the completion of each assignment of additional or changed work and if found correct will be approved by the Engineer and submitted for payment with the final quantities.

21.9 The Owner reserves the right to Contract with any person or firm other than the Contractor for any or all extra work. The Contractor's attention is especially called to the fact that he shall be entitled to no claim for damages for anticipated profits on any portion of the work that may be omitted.

21.10 In Unit Price Contracts, the total quantity of work may be adjusted upward or downward by the Owner, to the extent that the final Contract price is between 80 and 120 percent of the original estimated Contract price. Amounts of individual items may be varied to any extent and individual items may be omitted entirely as long as the above limits are met. In the event that the total quantity of work is adjusted upward or downward beyond the above limits, that portion of the work beyond said limits may be performed at the original Contract unit prices if agreed by the Owner and the Contractor, or otherwise, shall be handled in accordance with the provisions stated previously in this article.

22 DISPUTED CLAIMS

22.1 In any case where the Contractor deems that extra compensation is due the Contractor for work material not clearly covered in the Contractor's Contract and not ordered by the Engineer as extra work as defined herein, the Contractor shall notify the Engineer in writing of the Contractor's intention to make claim for such extra compensation before the Contractor begins the work on which the contractor bases the Contractor's claim.

22.2 In either case, if such notification is not given, or if after such notification is given, the Engineer is not afforded facilities for keeping strict account of actual costs as defined for force-account construction, the Contractor thereby agrees to waive the claim for extra compensation for such work. Such notice by the

Contractor, and the fact that the Engineer has kept account of the cost as aforesaid, shall not be construed as establishing the validity of the claim. The claim, when filed, shall be in writing and in sufficient detail to permit auditing and an intelligent evaluation by the Owner. The claim shall be supported by such documentary evidence as the claimant has available and shall be verified by affidavit or the claimant or other persons having knowledge of the facts. In the claim shall be accompanied by a written request to do so. Where the claimant asks an opportunity to present the claimant's claim in person, the Owner, within thirty (30) days of filing of the claim, shall fix a time and place for a meeting between the claimants, the Owner, or its designated representative or representatives. The Owner shall, within a reasonable time from the filing of the claim or the meeting above referred to, whichever is later, rule upon the validity of the claim and notify the claimant, in writing, of its ruling together with the reasons thereof. In case the claim is found to be just, in whole or in part, it shall be allowed and paid to the extent so found.

22.3 Any claim of the Contractor denied in whole or in part by the Owner or Engineer may be submitted to arbitration as set forth in Article 32.

23 OWNER'S RIGHT TO DO WORK

23.1 The Owner may at any time without cause suspend the work of any part thereof by giving ten (10) days written notice to the Contractor. The work shall be resumed by the Contractor within ten (10) days after the date fixed in the written notice from the Owner to the Contractor to do so. Failure of the Contractor to maintain the policies of insurance as required by Section 6 shall constitute a substantial violation of the Contract and the Owner shall have the right to suspend and/or terminate the Contract in accordance with Section 25.

23.2 If the work or any part thereof, shall be stopped by the notice in writing aforesaid and if the Owner does not give notice in writing to the Contractor to resume within a reasonable period of time, then the Contractor may abandon that portion of the work so suspended, and he will be entitled to the estimated payments for all work done on the portions abandoned, if any.

24 OWNER'S RIGHT TO DO WORK

24.1 If the Contractor should be adjudged bankrupt, or if he Contractor should make a general assignment for the benefit of the Contractor's creditors, or if a receiver should be appointed on account of the Contractor's insolvency, or if the Contractor should persistently or repeatedly refuse or should fail, except in

cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if the Contractor should fail to make prompt payments to subcontractors or for material or labor, or persistently disregard laws, ordinances or instructions of the Engineer, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner, upon the certificate of the Engineer that sufficient cause exists to justify such action, may without prejudice to any other right or remedy and after giving the Contractor seven (7) days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method the Engineer may deem expedient.

24.2 In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided and damage incurred through the Contractor's default, shall be certified by the Engineer.

24.3 Pending arbitration or settlement of disputes on any point of controversy the Engineer may suspend action on all or any part of the work. The Contractor shall not be entitled to any claim for loss or damage by reason of such delay nor shall he be entitled to extension of time although such extension of time may be granted by the Engineer if the Engineer deems it in the interest of the work.

25 CONTRACT TERMINATION

25.1 If the Contractor should be adjudged bankrupt, or if he should make a general assignment for the benefit of the Contractor's creditors, or if a receiver should be appointed on account of the Contractor's insolvency, or if the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if the Contractor should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or instructions of the Engineer, or otherwise be guilty of substantial violation of any provision of the contract, then the Owner, upon the certificate of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven (7) days written notice, terminate the employment of the Contractor and take

possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method the Engineer may deem expedient.

25.2 In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided and the damage incurred through the Contractor's default, shall be certified by the Engineer.

25.3 Pending arbitration or settlement of disputes on any point of controversy, the Engineer may suspend action on all or any part of the work. The Contractor shall not be entitled to any claim for loss or damage by reason of such delay nor shall the Contractor be entitled to extension of time although such extension of time may be granted by the Engineer if the Engineer deems it in the interest of the work.

26 CONTRACTOR'S RIGHTS

26.1 If the work should be stopped under an order of any court, or other public authority, for a period of three (3) months, through no act or fault of the Contractor or of anyone employed by the Contractor, or if the Engineer should fail to issue any estimate for payment within fourteen (14) days after it is due, or if the Owner should fail to pay the Contractor within twenty (20) days of its maturity and presentation any sum certified by the Engineer or awarded by arbitrators, then the Contractor, may, upon seven (7) days written notice to the Owner and the Engineer, stop work or terminate this Contract.

27 TIME OF COMPLETION

27.1 The Contract shall be completed within the time stated in the NOTICE OF HEARING AND LETTING subject to such extensions as may from time to time be allowed the Contractor by the Owner as hereinafter provided.

28 DELAYS

28.1 The Contractor expressly covenants and agrees that in undertaking to complete the work within the time herein fixed, the Contractor has taken into

consideration and made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials or workers, reasonably anticipatable weather, or otherwise. Should the Contractor, however, be delayed in the prosecution and completion of the work by reason of delayed shipment orders, abnormal weather, or by any changes, additions, omissions therein ordered in writing by the Owner, through no fault of the Contractor (Or by the abandonment of the work by the workers engaged thereon), or by any act taken by the U.S. Government such as the commandeering of labor, or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the work; or by neglect, delay or default of any other contractor of the Owner, or delays caused by court proceedings; the Contractor shall have no claims for damages for any such cause or delay; but shall in such cases be entitled to such extension of the time specified for the completion of the work as the Owner shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the Owner in writing with one (1) week from the time when any such alleged cause for delay shall occur.

29 PAYMENTS

29.1 Payment for said improvement will be made in accordance with the terms and conditions as set forth in the published NOTICE TO BIDDERS AND NOTICE OF PUBLIC HEARING.

29.2 The Contractor shall reimburse the Owner for any Engineer's or Architect's additional services or attorney's fees made necessary by the Contractor's failure to finally complete the Work within sixty (60) days after the date specified in the Contract Documents for Project Substantial Completion.

29.3 Request for Early Release of Retainage Funds:

Upon achieving Substantial Completion, as defined by Iowa Code Chapter 26, the Contractor may formally request the release of all or part of the retainage funds being held on the Project. The Contractors' request for Release of the Retainage Funds shall be accompanied by a sworn statement that ten (10) calendar days prior to filing the Request for Release of the Funds a notice was given to all known subcontractors, sub-subcontractors and suppliers that the Contractor is requesting the early release of retainage funds. If proper documentation is received from the Contractor, the Owner will release all retainage funds at the next monthly Board meeting or within thirty (30) days, whichever is less, except it may retain the following:

- a) An amount equal to 200% of the value of labor or materials yet to be provided on the Project as determined by the Owner and its authorized contract representative. For purposes of this section, "authorized contract representative" means the Architect of record on the Project, unless otherwise specified.
- b) An amount equal to 200% of the value of any Chapter 573 claims currently on file at the time the Request for Release of Retainage is approved.

If the Owner withholds an amount from the retainage payment to the Contractor, the Owner will provide a reason the request is being denied to the Contractor within thirty (30) calendar days of the receipt of the request.

30 PAYMENTS WITHHELD

30.1 The Owner may withhold or, on account of subsequently discovering evidence, nullify the whole or a part of any certificate to such an extent as may be necessary to protect himself from loss on account of:

30.1.1 Defective work not remedied.

30.1.2 Claims filed or reasonable evidence indicating a probable filing of claims.

30.1.3 Failure of the Contractor to make payments properly to Subcontractors or for material or labor.

30.1.4 A reasonable doubt that the Contract can be completed for the balance then unpaid.

30.1.5 Damage to another Contractor.

30.1.6 Any other violation of or failure to comply with the provisions of this Contract.

31 SALES TAX

31.1 The Contractor shall prepare, (and require all his Subcontractors to prepare), and execute the Iowa Contractor's Statement showing all sales and use taxes paid on material entering permanently into the construction of the Project. This report shall be submitted to the City Clerk immediately upon completion of the work or at any other interval of time as may be necessary, in order that the City may timely apply to the Iowa Department of Revenue for their refund.

32 REMEDIES

- 32.1 Subject to any submission and notice provisions contained in the Contract Documents, including those in Articles 22 and 28, which shall be conditions precedent to a request for arbitration, all controversies and claims between the parties may be submitted to arbitration, at the sole discretion of the Owner. If the Owner refuses to allow arbitration of a controversy or claim, then the parties agree and consent to the jurisdiction of the Iowa District Court for **Dallas** County.
- 32.2 During such time as any dispute is the subject of a demand for arbitration or a lawsuit, the contract terms shall remain in force and work shall continue as directed by the Owner or Engineer. Failure of the Contractor to continue to work as directed shall constitute a waiver by the Contractor of its claim.
- 32.3 All disputes allowed by the Owner to be submitted to arbitration shall be decided in accordance with the Construction Industry Arbitration Rules of American Arbitration Association ("AAA").
- 32.4 A written demand for arbitration shall be filed with the American Arbitration Association office in Minneapolis, Minnesota and with the other party within a reasonable time after the date of final payment to the Contractor by the Owner or after the expiration of thirty days from the rendering of a written decision by the Engineer, whichever earlier occurs.
- 32.5 Notwithstanding the Rules of the AAA, the arbitration panel shall consist of three persons. The Owner and the Contractor shall each appoint an arbitrator and the third shall be appointed by agreement of the appointees of the Owner and Contractor.
- 32.6 The arbitrators' award shall contain findings of fact and conclusions of law. The award shall be final, binding and conclusive as to findings of facts in accordance with the applicable arbitration law, but shall be reviewable for errors of law.
- 32.7 Nothing contained herein shall increase or otherwise expand the Owner's obligation to pay the Contractor other than documented and audited cases in accordance with the Owner's rules and regulations, regarding cost or pricing data analysis and cost principles.

SUPPLEMENTAL REGULATIONS

10-inch PROJECT MEREDITH/NW 10TH ST.- 2021 WAUKEE, IOWA

INDEX

- 1. PURPOSE**
- 2. LOCATION**
- 3. COPIES OF PLANS AND SPECIFICATIONS**
- 4. PAYMENT**
- 5. FINAL REVIEW AND ACCEPTANCE**
- 6. SALES TAX**

1. PURPOSE

- 1.1 SUPPLEMENTAL REGULATIONS are intended to clarify, supplemental or supersede REGULATIONS OF THE CONTRACT.

2. LOCATION

- 2.1 All work is located within the City of Waukee, Iowa, in easements on private property and on property owned by the City of Waukee.

3. COPIES OF PLANS AND SPECIFICATIONS

- 3.1 After award of the contract, the Engineer will furnish the Contractor up to five (5) sets of Plans and Specifications. Additional copies will be furnished at the Engineer's cost of reproduction.

4. PAYMENT

- 4.1 Separate payment will be made for only those items specially listed in the Proposal. All other work shall be paid for by applicable Unit Prices for items to which work pertains.

5. FINAL REVIEW AND ACCEPTANCE

- 5.1 Notify Engineer when installation is considered complete and ready for Final Review.

- 5.2 Owner will accept work and make final payment to Contractor:
 - 5.2.1 When the Engineer has certified the work of the Contractor has been reviewed and stated that the work is complete and in essential compliance with the Plans and Specifications;
 - 5.2.2 When Contractor has filed with Owner or Engineer documents called for in Specifications.
 - 5.2.3 When all government agencies involved have indicated, in writing that the work is complete and acceptable; and
 - 5.2.4 Contractor to provide Chapter 573 Claim Waivers for all materials supplied and labor provided on the Project.

6. SALES TAX

- 6.1 In lieu of Paragraph 31.1, Sales Tax, of the Regulations of the Contract, the Contractor will utilize a sales tax exemption certificate (provided by the City) for all materials purchased for incorporation in the project.

SPECIAL CONDITIONS

10-inch PROJECT MEREDITH/NW 10TH ST. - 2021 WAUKEE, IOWA

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1. FORM OF TECHNICAL SPECIFICATIONS

- 1.1 Omissions of words or phrases such as "the Contractor shall", "in accordance with", "shall be", "as noted on the Plans", "according to the Plans", "a", "an", "the", and "all" are intentional, supply omitted words or phrases by inference.
- 1.2 "Owner" and "City" shall mean the City of Waukee, Iowa, acting through the City Council.
- 1.3 "Person" shall mean any individual, partnership, limited partnership, joint venture, society, association, joint stock company, corporation, limited liability company, estate, receiver, trustee, assignee, or referee, whether appointed by a court or otherwise, and any combination of individuals.
- 1.4 "Engineer" shall mean the City of Waukee City Engineer or designated agent.
- 1.5 "Standard Drawings" shall mean Construction Detail Drawings bound with these Specifications.
- 1.6 "Work" shall mean the work to be done and the equipment, supplies, and materials to be furnished under the contract unless some other meaning is indicated by the context.

1.7 "Or equal" shall follow manufacturers names used to establish standards and, if not stated, is implied.

2. NOTICE TO PROCEED

2.1 The Contractor shall proceed with the work and in the time set forth according to the conditions as outlined in the NOTICE TO BIDDERS AND NOTICE OF PUBLIC HEARING upon issuance of a written Notice to Proceed.

3. SERVICE FACILITIES

3.1 The Contractor will be required to make arrangements for all services required during the construction period and pay for such services at no additional cost to the Owner.

4. MINOR WORK

4.1 Any minor work not specifically mentioned in the Specifications as shown on the Plans but obviously necessary for the proper completion of the work shall be considered as being a part of and included in the contract and shall be executed in the proper manner and the Contractor shall not be entitled to extra or additional compensation for the same.

5. WASTE SITES

5.1 All waste material shall be hauled to a site of the Contractor's choice with the Engineer's approval or the Metro East Sanitary Landfill. Disposal costs will be included in the Contract Cost and not paid by the City as a separate item.

6. WORKING DAYS

6.1 Except for such work as may be required to properly maintain lights and barricades, no work will be permitted on Sundays or legal holidays without specific permission of the Engineer.

7. CONSTRUCTION FACILITIES BY CONTRACTOR

7.1 Provide a telephone, attended at all times during the working day; provide liason between telephone and construction personnel for expeditious handling of messages.

- 7.2 Provide suitable protection necessary for proper storage of materials and equipment.
- 7.3 Location of all construction facilities, including project construction plant and yard, subject to approval by Public Works Director; remove all construction facilities upon completion of work.
- 7.4 Provide and maintain suitable sanitary facilities for construction personnel for duration of work; remove upon completion of work.
- 7.5 Provide fence, barricades, and/or watchmen to prevent access to unauthorized persons to site where work is in progress.
- 7.6 Provide telephone number(s) at which responsible representative of Contractor can be contacted evenings, weekends and holidays.

8. SOIL BORINGS

- 8.1 Soil borings have not been made along proposed route of work.
- 8.2 Obtain permission of Engineer to make borings along proposed route of work.

9. CONSTRUCTION ON HIGHWAY RIGHT OF WAY

- 9.1 All work in Right of Way of State and Federal Highways must comply with requirements of Iowa Department of Transportation.

10. EMPLOYMENT PRACTICES

- 10.1 Neither the Contractor nor his Subcontractors, shall employ any person whose physical or mental condition is such that this employment will endanger the health and safety of himself or others employed on the Project.
- 10.2 The Contractor shall not commit any of the following employment practices and agrees to include the following clauses in any Subcontracts:
 - 10.2.1 To discharge from employment or refuse to hire any individual because of sex, race, color, religion, national origin, sexual orientation, marital status, age, or disability unless such disability is related to job performance of such person

or employee.

10.2.2 To discriminate against any individual in terms, conditions, or privileges of employment because of sex, race, color, religion, national origin, sexual orientation, marital status, age, or disability unless such disability is related to job performance of such person or employee.

11. WORK HOURS

11.1 The Contractor will be required to limit the Contractor's work hours on the Project from 7:00 a.m. to 9:00 p.m., Monday through Friday unless noted on plans. Should equipment be used which is excessively noisy and distressing to area residents, the Engineer reserves the right to limit hours of operation from 7:00 a.m. to 7:00 p.m. Prior approval from the Engineer will be required for work on weekends or holidays.

12. DUST ABATEMENT

12.1 The Contractor shall make a reasonable effort to assure dust does not become a problem. The Engineer reserves the right to stop Contractor's operations whenever dust becomes a problem on the Project and direct the Contractor to revise operations to solve the dust problem. It is realized some dust on the Project is inevitable, but it must be kept to a minimum.

13. WATER USAGE

13.1 The City of Waukee Public Works will provide the Contractor water on the Project per current bulk water usage rates, with the following requirements:

13.1.1 The water is to be metered and the Contractor must obtain the meter from the Waukee Public Works Department and a refundable meter deposit is required.

13.1.2 The Contractor will abide by rules and regulations of bulk water usage as prepared by Waukee Public Works.

13.1.3 The Contractor will only use hydrants that have been previously approved by the Waukee Public Works for bulk

water usage.

- 13.1.4 The Contractor shall not use water from private residential or business hose bibs, without the written consent of the private owner. Any such agreements must be filed with the Engineer prior to water usage.

14. QUANTITIES

- 14.1 The Contractor is to realize some of the quantities on this Project are best estimates and may vary from actual conditions at time of construction of the Project. Quantities must be regarded as approximate only, and are given as a guide to the Bidder and for comparison of Bids. The City reserves the right to increase or diminish these quantities within reasonable limits and the Contractor will be paid for only as much work as the contractor is required to do by the City at the unit price stated in the Proposal.