

NOTICE OF ACCEPTABILITY OF WORK

Owner: City of Oelwein
Engineer: FOX Strand Engineer's Project No.: 3406-18A
Contractor: Summers' Enterprise, Inc.
Project: Oelwein 2021 Water Main Improvements
Notice Date: 4/6/2023 Effective Date of the Construction Contract: 4/5/2021

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated December 10, 2019 ("Owner-Engineer Agreement").

The work was completed on **November 7, 2022**. The revised contract completion date is February 8, 2022.

The total amount due to the contractor for the fulfillment of said Contract is **\$1,116,999.48** minus any Council determined set-offs.

Ninety-seven percent (97%) of the total amount due to the contractor should be paid after acceptance of the construction by the Owner. The remaining three percent (3%) shall then be paid no sooner than thirty (30) days following formal acceptance of the construction by the Owner provided that no unpaid claims exist in connection with this Contract. The Contractor will receive interest on any unpaid balance at the maximum legal rate from and after thirty (30) days following acceptance of the project by the Owner.

This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

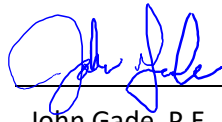
1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.

5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract and is subject to Owner's reservations of rights with respect to completion and final payment.

Signed:

FOX Strand

By *(signature)*:



Name *(printed)*:

John Gade, P.E.

Date:

4/6/2023

Title:

Project Manager

Iowa Registration No.:

16015

Accepted by:

Owner: _____

Resolution: _____

Signed: _____

Title: _____

Date: _____

Attest: _____

Distribution:

Engineer
Contractor
Owner



April 6, 2023

Mayor & City Council
City of Oelwein
20 Second Ave SW
Oelwein, Iowa 50662

RE: Oelwein 2021 Water Main Improvements - Liquidated damages

Dear Mayor & City Council,

Summers' Enterprise (CONTRACTOR) has satisfactorily completed in general compliance with the terms, conditions, and stipulations of said Contract for the Oelwein 2021 Water Main Improvements. The project was substantially completed on August 24, 2022. The final completion date was on November 7, 2022. Prior to the final acceptance of the project, the City Council will need to provide general direction on how to assess any liquidated damages on the project.

The following are the liquidated damages per the contract:

- Milestone No. 1 and No. 2 \$1,000/calendar day
- Substantial Completion \$500/calendar day
- Final Completion \$200/calendar day

The original contract documents required all water main improvements substantially completed by October 1, 2021 and final completed by December 17, 2021. There was a total of six (6) change orders on the project. Council granted 53 additional calendar days to substantially complete the project (November 23, 2021). Council grant 53 additional calendar days to finally complete the project (February 8, 2022). Work was suspended due to winter weather from December 4, 2021 to March 30, 2022.

There are **\$179,700.00** in liquidated damages per the contract documents. Liquidated damages for failure to attain milestones, substantial completion, and final completion are not additive and per the contract cannot not be imposed concurrently. The following is a summary of liquidated damages:

Milestone No. 1 (*Pavement restoration milestone*). *Upon commission of the water main at each project location, the contractor shall have 14 calendar days to complete pavement restoration and reopen the roadway to traffic.*

- 12th Ave SE not paved.** The water main along 12th Ave SE passed all tests and was put into commission on October 27, 2021. The roadway was paved by November 11, 2021 which exceeded Milestone No. 1 by seven (7) calendar days. Thus, 7 days at \$1,000/day is \$7,000 in damages. These dates overlap with Milestone No. 2 and the damages cannot be additive.
- 1st St NE not paved.** The water main work resumed after winter on March 31, 2022. The water main along 1st St NE passed all tests and was put into commission On May 17, 2022. On May 31, 2022 1st St NE was NOT paved (14 days after May 17, 2022 completion of utility work). The roadway pavement was restored on August 24, 2022. Thus, 86 days at \$1,000/day is **\$86,000** in damages.

Milestone No. 2: *Work required outside of school dates. Impact to traffic may only occur on 12th Avenue SE and the intersection of 1st Street NE and 8th Avenue NE between the dates of June 1, 2021 and August 20, 2021 (outside school session dates). Liquidated damages will be counted for each calendar day before or after these dates in which traffic is not fully opened (temporary surfacing is NOT considered to fulfill the requirement to be fully opened to traffic).*

- a. Council approved 14 additional calendar days for Milestone No. 2. Damages began accruing on September 4, 2021, since the pavement work was not completed prior to the start of school. The roadway was paved and open to traffic on November 17, 2021, which exceeded Milestone No. 2 by 50 calendar days and damages of **\$50,000**.

Substantial Completion:

- a. **\$5,000** 10 calendar days at \$500/day (November 24, 2021 to December 3, 2021)
- b. **\$23,500** 47 calendar day at \$500/day (March 31, 2022 to May 16, 2022)

Final Completion:

- a. **\$15,200** 76 calendar days at \$200/day (August 24, 2022 to November 7, 2022).

There are **\$242,264.39** in direct damages or additional costs incurred by the City of Oelwein due to the delays in completion of the project. Note the school traffic along 12th AVE SE had to be continuously rerouted due to the roadway being closed due to construction. The following are direct damages to the City as a result of these delays:

- \$30,332.00 City of Oelwein Water Department expenses. Expenses include extra flushing of hydrants, repair of water service corporations damaged by construction, repairs of broken water main, repair of plugged water meter, bacteria testing, turning of valves, and replacement of water caps.
- \$211,932.39 FOX Strand observation services and construction administration services over the original contract agreement.

The following is a summary of the project costs:

- \$1,356,109 Summers' Construction Bid with Engineering Fees (\$93,891 below budget)
- \$30,332.00 City Water Department expenses
- \$211,932.39 FOX Strand additional observation and administration expenses
- \$60,760.65 Change Orders on the Project

The City has spent approximately **\$1,612,000** on this project to date. The original project budget was \$1,450,000. The City received a \$600,000 Community Development Block Grant (CDBG). The project is currently **\$162,000** over the original project budget.

According to the bid documents, the Council has the following options to consider:

Option A: Assess no damages.

Option B: Assess **\$179,700.00** based on the number of days past the project completion dates.

Option C: Assess **\$162,000.00** based on the amount the project is over the original project budget.

Option D: Other option to be determined by the Council.

City Council should consult with their City Attorney regarding this matter since it is likely the CONTRACTOR will file a claim. City Staff desires the City Council to consider suspending Summers' Enterprise from bidding on future projects.

Sincerely,

FOX Strand Associates, Inc.

John Gade, P.E.

John Gade, P.E.

Project Manager