



# ECCO Midwest, Inc.

2939 Enterprise Avenue, Hastings, MN 55033 | Phone: 651-788-9556 | Fax: 651-788-9562 | eccomidwest.com

## PROPOSAL / CONTRACT

ECCO Midwest, Inc.  
("ECCO")  
967 - 33<sup>rd</sup> Avenue Southwest  
Cedar Rapids, Iowa 52404  
Phone: 319-362-1431  
Fax: 319-362-1487  
E-Mail: [jdahl@EccoMidwest.com](mailto:jdahl@EccoMidwest.com)  
Attn: Jeff Dahl  
Mobile: 651-900-2712

City of Oelwein  
("Client")  
20 2<sup>nd</sup> Avenue SW  
Oelwein, IA 50662  
Phone: 319-283-5862  
Fax: \_\_\_\_\_  
E-Mail: [buildingofficial@cityfoelwein.org](mailto:buildingofficial@cityfoelwein.org)  
Attn: Jay Shekleton

ECCO and Client agree as follows: Pursuant to the terms and conditions of this Contract, ECCO shall provide the labor and materials described in the "Scope of Work" set forth below, at the following location: City of Oelwein – 4 Additional Properties (the "Work Site").

"Contract" shall mean this page and the "Terms and Conditions" attached hereto or otherwise provided by ECCO to Client, along with any documents or schedules referenced either on this page or in the Terms and Conditions. This page and the Terms and Conditions shall control over any conflicting provisions in the documents or schedules referenced therein.

### SCOPE OF WORK

The "Work" to be performed under this Contract shall be:  
Removal and disposal of asbestos containing materials as defined by sampling reports done by  
Jim Prouty – City of Oelwein.

<u>Each property will require a notification to the State of Iowa.</u>	
<u>34 5<sup>th</sup> Avenue SE -</u>	<u>\$1,900.00</u>
<u>9-6<sup>th</sup> Street NE -</u>	<u>\$4,400.00</u>
<u>524 2<sup>nd</sup> Avenue NW -</u>	<u>\$1,520.00</u>
<u>208 8<sup>th</sup> Avenue SW -</u>	<u>\$ 900.00</u>
<b><u>Total of this proposal -</u></b>	<b><u>\$8,720.00</u></b>

### CONTRACT PRICE

The Contract Price for the Work shall be: See Above

ECCO will invoice for completed work as it deems appropriate; invoices shall be paid by Client on a net thirty-day basis at ECCO's address shown above.

**Authorized ECCO Midwest, Inc. Signature**

**Authorized Client Signature**

By:   
Jeff Dahl

By: \_\_\_\_\_

Its: Project Manager

Its: \_\_\_\_\_

Date: August 19, 2020

Date: \_\_\_\_\_

ECCO MIDWEST, INC. CONTRACT TERMS AND CONDITIONS

- 1. **Completion of Work**  
Upon full execution of the Contract, and subject to Client's fulfillment of its obligations under the Contract, ECCO Midwest, Inc. shall promptly commence and shall diligently proceed with the Work.
- 2. **Changes**  
No alteration shall be made in the Scope of Work described in the Contract, or in the Contract Price, except by written change order signed by ECCO Midwest, Inc. and Client, or by a verbal request for alteration confirmed by written change order signed by ECCO Midwest, Inc. and Client within five (5) business days. If an alteration is to be made, the value of labor and materials added or omitted shall be computed and determined by ECCO Midwest, Inc., and the amount so determined shall be added to or deducted from the Contract Price.
- 3. **Permits and Approvals**  
ECCO Midwest, Inc. shall be responsible for obtaining all governmental permits or approvals necessary for completion of the Work. Client agrees to provide ECCO Midwest, Inc. with all cooperation necessary to obtain such permits and approvals.
- 4. **Disclaimer of Warranties**  
ECCO Midwest, Inc. shall perform the Work using the care, skill and diligence normally applied by contractors in the performance of work similar to that contemplated under the Contract. ECCO MIDWEST, INC. DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 5. **Limitation of Liability**  
Neither party shall be liable to the other party in any action or claim for any indirect, incidental or consequential damages, including without limitation, loss of profit, production, revenues, or other damages attributable to business interruption resulting from any default or breach of the Contract, or in any other way connected with performance of the Work contemplated by the Contract. Further, under all circumstances, ECCO Midwest, Inc.'s liability to Client shall be limited to the portion of the Contract Price actually paid to ECCO Midwest, Inc..
- 6. **Responsibility for Remediation Protocols**  
If the Work to be performed under the Contract is a microbial abatement project, Client, by and through its independent industrial hygienists and/or environmental consultants, shall have performed, or will perform, a thorough environmental investigation and have specified, or will specify, the methods and extent of remediation. Client hereby releases ECCO Midwest, Inc. and its employees, officers and successors, from any liability for errors or omissions made in the preparation of the protocol and/or remediation methods. ECCO Midwest, Inc. makes no representations or warranties as to whether those methods will be effective or appropriate.
- 7. **Disclosure to Third Parties**  
If the Work to be performed under the Contract is a microbial abatement project, Client shall have the sole responsibility to disclose to any persons Client deems appropriate, including occupants of the Work Site, that mold, fungus, sewage, water damage and/or biological contamination may lead to adverse health effects. Further, Client will indemnify and hold ECCO Midwest, Inc. harmless from any claims that may arise as a result of failure to make such disclosure. ECCO Midwest, Inc. has not provided, and will not provide, medical advice to Client, and Client agrees not to interpret any statements made by ECCO Midwest, Inc. as medical advice.
- 8. **Access to Work Site**  
Client shall provide ECCO Midwest, Inc. with access to the Work Site in the manner and at the times requested by ECCO Midwest, Inc.. Client acknowledges that there are inherent physical dangers of being present on any remediation site, including the Work Site. Client agrees that it or its personnel or representatives will not enter onto the Work Site prior to completion of the Work unless accompanied by an ECCO Midwest, Inc. representative. If Client or its personnel or representatives enter the Work Site in breach of these Terms and Conditions, Client agrees that it expressly assumes all risks of such entry, whether latent, patent or otherwise; and Client further agrees that any and all injury or loss is proximately caused by such access, because such injury or damage could not have occurred but for Client's breach of these Terms and Conditions. Further, Client agrees to indemnify and hold ECCO Midwest, Inc. harmless from any and all claims, liabilities, costs, expense, or causes of action resulting from any such unauthorized entry into the Work Site.
- 9. **Default; Right to Terminate**
  - (a) ECCO Midwest, Inc. shall have the right to terminate this Agreement upon five (5) days written notice to Client of any default by Client under the Contract, including without limitation, the failure to timely pay any portion of the Contract Price.
  - (b) Further, ECCO Midwest, Inc. shall have the right to terminate this Contract upon written notice to Client if: (1) ECCO Midwest, Inc. is unable to obtain all necessary governmental and/or other approvals or permits in connection with the Work, or (2) for reasons beyond ECCO Midwest, Inc.'s control, the Work cannot be completed as scheduled or within a reasonable time thereafter. If ECCO Midwest, Inc. terminates the Contract pursuant to this subparagraph (b), it shall be entitled to full payment for any work done by ECCO Midwest, Inc. up to the date of such termination.
- 10. **Arbitration**
  - (a) The parties agree that any claim (including claims of fraud) arising out of, relating to, or connected in any way with, the Contract or the breach thereof, shall be settled by final and binding private arbitration before a single arbitrator (the "Arbitrator") in Minneapolis, Minnesota, except ECCO Midwest, Inc. may choose to litigate any dispute wherein: (a) any Claim against ECCO Midwest, Inc. exceeds Five Hundred Thousand and No/100 Dollars (\$500,000.00); or (b) ECCO Midwest, Inc. seeks an injunction or specific performance.
  - (b) Arbitration shall be commenced by delivery of a written Demand for Arbitration. Within twenty (20) days of delivery, each party shall propose three potential arbitrators. Unless agreement is reached on a single arbitrator, within ten (10) days thereafter each Party shall designate one (1) of the potential arbitrators proposed and the persons so designated shall promptly confer and choose the Arbitrator. The arbitration shall not be administered by the American Arbitration Association, but shall be conducted otherwise pursuant to its Commercial Arbitration Rules, except that each Party shall have the right to take one or more, but no more than five, pre-arbitration depositions.
  - (c) Arbitration arising out of or relating to any claim shall not include, by consolidation, joinder, or in any other manner, any third party, including without limitation, any architect, engineer, or other design consultant retained by ECCO Midwest, Inc., except where ECCO Midwest, Inc. has consented to such consolidation or joinder in writing, and the third party has also consented in writing to such consolidation or joinder.
- 11. **Indemnification**  
Each party (the "Indemnifying Party") shall be liable for and indemnify and hold harmless the other party (the "Indemnified Party") from any and all actions, suits, claims and costs in respect of injury or sickness, disease or death of any person or loss of or damages to any property, which may be brought against the Indemnified Party by third parties including employees of said third parties and employees of the Indemnifying Party, which are directly related to or arise from the breach or noncompliance with any term or provision of this Contract by the Indemnifying Party.
- 12. **Attorneys' Fees**  
Client agrees to pay ECCO Midwest, Inc.'s costs and expenses, including attorneys' fees, incurred by ECCO Midwest, Inc. in enforcing any of its rights under the Contract.
- 13. **Notices**  
All notices to be given under the Contract shall be in writing and addressed to the other party at the address on the first page of the Contract. Notices shall be deemed received on the earlier of:
  - (i) the date of actual receipt;
  - (ii) the day after delivering the notice (correctly addressed) to Federal Express or equivalent delivery service; or
  - (iii) two days after mailing the Notice by United States Certified Mail, Return Receipt Requested.
- 14. **Miscellaneous**  
The invalidity, illegality or unenforceability of any provision, restriction, condition, reservation or any other part of the Contract, in its entirety or as applied to particular circumstances, shall not impair or affect in any manner the validity, legality, enforceability or effect as otherwise applied to the remainder of the Contract. The Contract shall be governed by the laws of the State of Minnesota. The Contract shall not be assigned by Client except with ECCO Midwest, Inc.'s prior written consent. The Contract, or any portion of the Work there under, may be assigned or subcontracted by ECCO Midwest, Inc. without prior written consent of Client. The captions and headings are for convenience only and do not define or limit the scope or intent of the Contract. This Contract sets forth the entire understanding of the parties. ECCO Midwest, Inc. will not be bound by any representations or agreements not expressly contained as a written part of the Contract, including its exhibits, schedules, and/or addenda. Any number of counterparts of the Contract may be executed and each such executed counterpart shall be deemed an original, but all such counterparts together shall constitute one agreement. By signing below, Client acknowledges receipt of a copy of the Contract.

AUTHORIZED ECCO MIDWEST, INC. SIGNATURE

AUTHORIZED CLIENT SIGNATURE

By: Jeff Saul  
Its: Project Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Mechanic's Lien Notice**

Iowa law requires the following notice:

**A. ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY HAS NOT PAID FOR THE CONTRIBUTIONS.**

**B. UNDER IOWA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.**

Initial Here:

ECCO Midwest, Inc. gd

Client \_\_\_\_\_