



March 22, 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

Council revised the substantial completion date from October 1, 2021 to October 26, 2021 based on additional work approved for Change Order No. 1 and No. 2. Council approved 15 additional calendar days between May 17, 2022 and August 23, 2022 for both substantial and final completion based on additional work approved for Changer Order No. 5. Work was suspended due to winter weather from December 4, 2021 to March 30, 2022. The contract final completion date is January 11, 2021. Liquidated damages for failure to attain milestones, substantial completion, and final completion are not additive and per contract, cannot not be imposed concurrently.

There are **\$264,480.00** in liquidated damages per the contract documents. 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 was put into commission on October 27, 2021. Milestone No. 1 began accruing liquidated damages on November 11, 2021. This work was completed November 17, 2021 which exceeded Milestone No. 1 by seven calendar days for a liquated damage of **\$7,000**.
- 1st St NE not paved.** Work resumed on 1st St NE on March 31, 2022. SC LDs of \$500/day resumed (work started in spring). On May 17, 2022 the utility work was completed on 1st St NE. On May 31, 2022 1st St NE was NOT paved (14 days after May 17, 2022 completion

of utility work). Thus \$1,000/day Milestone 1 LDs are assessed. 6/1/2022 to 8/23/2022 or 84 days. **\$84,000 LDs.**

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). Milestone No. 2 began accruing liquidated damages on August 21, 2021, since the pavement work was not completed prior to the start of school. This work was completed November 17, 2021, which exceeded Milestone No. 2 by 89 calendar days for a liquidated damage of **\$89,000.**

Substantial Completion:

- a. **\$7,500** 15 calendar days at \$500/day (November 18, 2021 to December 3, 2021)
- b. **\$65,500** 131 calendar day at \$500/day (March 31, 2022 to August 24, 2022 minus 15 calendar days for Changer Order No. 5).

Final Completion:

- a. **\$11,800** 59 calendar days at \$200/day (August 24, 2022 to November 7, 2022 minus 15 calendar days for Change Order No. 5).

There are **\$241,838.98** 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.
- \$211,506.98 FOX Strand observation services and construction administration services over the original contract agreement.

The following is a summary of the project costs:

- \$1,450,000 Total Project Budget with Engineering Fees prior to bid
- \$1,356,109 Summers' Construction Bid with Engineering Fees (\$93,891 below budget)
- \$30,332.00 City Water Department expenses
- \$211,506.98 FOX Strand additional observation and administration expenses
- (\$50,219.51) Construction savings on the project due to change orders

The City has spent **\$1,547,728.47** on this project to date. The project is currently **\$97,728.47** 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 **\$264,480.00** based on the number of days past the project completion dates.
- Option C: Assess **\$241,838.98** based on the additional costs to the City of Oelwein.
- Option D: Assess **\$97,738.47** based on the amount the project is over the original project budget.
- Option E: 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