

**BOARD OF TRUSTEES OF THE COULTHARD LEVEE
DRAINAGE DISTRICT
LOCATED IN POTTAWATTAMIE
AND HARRISON COUNTY IOWA
BOARD OF SUPERVIORS' HEARING ROOM
POTTAWATTAMIE COUNTY COURTHOUSE
227 SOUTH 6TH STREET
COUNCIL BLUFFS, IOWA 51501**

Please note:

You may participate in this meeting via:

- In person: Limited number of attendees allowed in Board Hearing Room due to Governor's self-distancing order

- YouTube, at:

<https://www.youtube.com/channel/UCeP9ZQIBgMpuSyOprlyMl6g>

- Telephone Conference call: (712) 328-5848

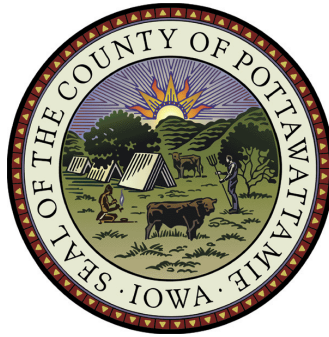
Tuesday, August 31, 2021

Agenda

10:00 A.M. – Approval of minutes regarding Coulthard Levee District meeting from August 24, 2021.

Coulthard Levee-Board of Trustees of the Coulthard Levee Drainage District to discuss jointly with Harrison County and Bolton & Menk, Inc., regarding the Coulthard Levee and the recommendation by attorneys regarding the height of the levee and “Coulthard Special Use Permit Application”.

MELVYN J HOUSER
POTTAWATTAMIE COUNTY AUDITOR
AND ELECTION COMMISSIONER
227 S 6TH ST, PO BOX 649
COUNCIL BLUFFS, IOWA 51502-0649



Linda Swolley-Drainage Clerk
Phone (712) 328-5700
FAX (712) 328-4740

Coulthard Levee Drainage District

August 24, 2021 at 9:55 A.M.

Present: Scott Belt, Justin Schultz, Tim Wichman, Brian Shea and Lynn Grobe Board Members as Trustees of Coulthard Levee Drainage District. Also present Linda Swolley, Drainage Clerk.

Scott Belt opened Coulthard Levee Drainage District meeting.

The drainage clerk presented the Board with a report from Bolton & Menk requesting payments to Don Brothers, Otto Family Farms, LLC and Olson Contracting. These payments are for easements, crop damages, and restoration work. The payments in the amounts of \$12,671.50 for Don Brothers, \$3,323.50 for Otto Family Farms, LLC and \$15,355.00.

The drainage clerk presented the Board minutes from Harrison County dated August 19, 2021.

Coulthard Levee District motion to approve and authorize payments for borrow easements and 2020 Damages Report by Bolton & Menk to Don Brothers, Otto Family Farms, LLC and Olson Contracting for the Coulthard Levee Drainage District, motion first by Wichman, second by Schultz, motion unanimously carried.

Linda Swolley, Clerk
Pottawattamie County Auditor's Office
227 South 6th Street
Council Bluffs IA 51501
712-328-5700

Consent Agenda

August 24, 2021

MET IN REGULAR SESSION

The Board of Supervisors met in regular session at 10:00 A.M. All members present. Chairman Belt presiding.

PLEDGE OF ALLEGIANCE

1. CONSENT AGENDA

After discussion was held by the Board, a Motion was made by _____, and second by _____, to approve:

- A. August 17, 2021, Minutes as read.
- B. Public Health – Employment of Maria Torres as Health Equity Coordinator; Jason Kuehnhold as Quality Assurance Coordinator; and Brittany McGee as Promotions Coordinator.
- C. Class E Liquor License (LE), granting privileges of Class B Wine Permit, Class C Beer Permit (Carryout Beer), Class E Liquor License (LE), and Sunday Sales for Taylor Oil Company d/b/a Taylor Quik Pik, Council Bluffs.

UNANIMOUS VOTE. Motion Carried.

2. SCHEDULED SESSIONS

Motion made by Schultz, second by Shea, to approve and authorize Chairman to sign Contract for Workforce Development Services with the Council Bluffs Area Chamber of Commerce to be paid out of Gaming. UNANIMOUS VOTE. Motion Carried.

Motion made by Wichman, second by Shea, to approve and authorize Board to sign **Resolution No. 96-2021** entitled: RESOLUTION SUPPORTING A COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY APPLICATION FOR PROPERTY BUYOUTS; and to authorize chairman to sign Federal Assurances Signature Page and HUD Form No. 2880 – Applicant/Recipient Disclosure/Update Report.

RESOLUTION NO. 96-2021

RESOLUTION SUPPORTING A COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY APPLICATION FOR PROPERTY BUYOUTS.

- WHEREAS,** Pottawattamie County (County) sustained flood damage in March 2019 and was declared a disaster area by Presidential Declaration DR-4421-01 dated March 12, 2019; and
- WHEREAS,** as a result of the flood damage, the State of Iowa was awarded \$96,741,000 in Community Development Block Grant – Disaster Recovery (CDBG-DR) by the U.S. Department of Housing and Urban Development (HUD) for flood recovery, including Mills County; and
- WHEREAS,** the Iowa Economic Development Agency (IEDA) prepared an Action Plan for Disaster Recovery outlining the use of CDBG-DR funding; and
- WHEREAS,** the buyout of flood damaged properties is one of four eligible activities for the use of CDBG-DR funds; and
- WHEREAS,** County is proposing the acquisition and demolition of 8 properties using Hazard Mitigation Grant Program and Iowa Flood Recovery Fund; and
- WHEREAS,** the County is eligible entity to received CDBG-DR funds; and
- WHEREAS,** after consideration and review, the Pottawattamie County Board of Supervisors finds that an application to IEDA would be in the best interest of the County.

NOW THEREFORE BE IT RESOLVED, that the Pottawattamie County Board of Supervisors hereby supports the CDBG-DR application to IEDA; and

BE IT FURTHER RESOLVED, that the Board of Supervisors authorizes the Metropolitan Area Planning Agency to submit an application to IEDA on behalf of the County.

Dated this 24th Day of August, 2021.

ROLL CALL VOTE

	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	○	○	○	○
_____	○	○	○	○

Tim Wichman				
_____	○	○	○	○
Lynn Grobe				
_____	○	○	○	○
Justin Schultz				
_____	○	○	○	○
Brian Shea				
ATTEST: _____				
Melvyn Houser, County Auditor				

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

3. OTHER BUSINESS

Motion made by Schultz, second by Shea, to approve new Cyber Security Analyst I job description and to allow IT to pursue filling the role. UNANIMOUS VOTE. Motion Carried.

Discussion was held on the use of Courthouse Conference Rooms. Discussion only. No action taken.

Motion by Wichman, second by Shea, to approve and authorize Board to sign Resolution No. 89-2021 entitled: RESOLUTION DIRECTING THE ADVERTISEMENT FOR SALE OF \$5,955,000 (DOLLAR AMOUNT SUBJECT TO CHANGE) GENERAL OBLIGATION LOCAL OPTION SALES AND SERVICE TAX BONDS, SERIES 2021C, AND APPROVING ELECTRONIC BIDDING PROCEDURES AND OFFICIAL STATEMENT.

RESOLUTION NO. 89-2021

RESOLUTION DIRECTING THE ADVERTISEMENT FOR SALE OF \$5,955,000 (DOLLAR AMOUNT SUBJECT TO CHANGE) GENERAL OBLIGATION LOCAL OPTION SALES AND SERVICE TAX BONDS, SERIES 2021C, AND APPROVING ELECTRONIC BIDDING PROCEDURES AND OFFICIAL STATEMENT

WHEREAS, the County is in need of funds to pay costs of acquisition of land and construction and equipping of county shops to service secondary roads, general county purpose(s), and it is deemed necessary and advisable that General Obligation Local Option Sales and Services Tax Bonds, to the amount of not to exceed \$8,000,000 be authorized for said purpose(s); and

WHEREAS, pursuant to notice published as required by Section 423B.9(4) of the Code of Iowa, the Board of the County has held a public meeting and hearing upon the proposal to institute proceedings for the issuance of Bonds, and no petitions for referendum having been received, the Board is therefore now authorized to proceed with the issuance of said Bonds for such purposes; and

WHEREAS, in conjunction with its Municipal Advisor, Speer Financial, Inc., the County has caused an Official Statement to be prepared outlining the details of the proposed sale of the Bonds; and

WHEREAS, the Board has received information from its Municipal Advisor evaluating and recommending the procedure hereinafter described for electronic, facsimile and internet bidding to maintain the integrity and security of the competitive bidding process and to facilitate the delivery of bids by interested parties; and

WHEREAS, the Board deems it in the best interests of the County and the residents thereof to receive bids to purchase such Bonds by means of both sealed and electronic internet communication.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF POTTAWATTAMIE COUNTY, STATE OF IOWA:

Section 1. That the receipt of electronic bids by facsimile machine and through the SpeerAuction Competitive Bidding System described in the Notice of Sale and Official Statement are hereby found and determined to provide reasonable security and to maintain the integrity of the competitive bidding process, and to facilitate the delivery of bids by interested parties in connection with the offering at public sale.

Section 2. That General Obligation Local Option Sales and Service Tax Bonds, Series 2021C, of Pottawattamie County, State of Iowa, in the amount of \$5,955,000 (Dollar Amount Subject to Change), to be issued as referred to in the preamble of this Resolution, to be dated October 12, 2021, be offered for sale pursuant to the published advertisement.

Section 3. That the preliminary Official Statement in the form presented to this meeting be and the same hereby is approved as to form and deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Commission, subject to such revisions, corrections or modifications as the Chairperson and County Auditor, upon the advice of bond counsel, and the County's Municipal Advisor, shall determine to be appropriate, and is authorized to be distributed in connection with the offering of the Bonds for sale.

Section 4. That the Auditor is hereby directed to publish notice of sale of the Bonds at least once, the last one of which shall be not less than four clear days nor more than twenty days before the date of the sale. Publication shall be made in the "Daily Nonpareil", a legal newspaper, printed wholly in the English language, published within the county in which the Bonds are to be offered for sale or an adjacent county. The notice is given pursuant to Chapter 75 of the Code of Iowa, and shall state that this Board, on the 14th day of September, 2021, at 1:00 P.M., will hold a meeting to receive and act upon bids for said

Bonds, which bids were previously received and opened by County Officials at 10:30 A.M. on said date. The notice shall be in substantially the following form:

(To be published between August 25, 2021 and September 10, 2021, inclusive)

NOTICE OF BOND SALE

Time and Place of Sealed Bids: Bids for the sale of Bonds of Pottawattamie County, State of Iowa, hereafter described, must be received at the office of the County Treasurer, Board Room, County Courthouse, 227 South 6th Street, Council Bluffs, Iowa (the "Issuer") before 10:30 A.M., on the 14th day of September, 2021. The bids will then be publicly opened and referred for action to the meeting of the Board of Supervisors in conformity with the TERMS OF OFFERING.

The Bonds: The Bonds to be offered are the following:

GENERAL OBLIGATION LOCAL OPTION SALES AND SERVICE TAX BONDS, SERIES 2021C, in the amount of \$5,955,000*, to be dated October 12, 2021 (the "Bonds")

*Subject to principal adjustment pursuant to official Terms of Offering.

Manner of Bidding: Open bids will not be received. Bids will be received in any of the following methods:

- Sealed Bidding: Sealed bids may be submitted and will be received at the office of the County Treasurer at 227 South 6Th Street, Council Bluffs, Iowa.
- Electronic Internet Bidding: Electronic internet bids will be received at the office of the County Treasurer at 227 South 6Th Street, Council Bluffs, Iowa. The bids must be submitted through the SPEERAUCTION competitive bidding system.
- Electronic Facsimile Bidding: Electronic facsimile bids will be received at the office of the County's Municipal Advisor, Speer Financial, Inc., Waterloo, Iowa (facsimile number: (319) 291-8628). Electronic facsimile bids will be treated as sealed bids.

Consideration of Bids: After the time for receipt of bids has passed, the close of sealed bids will be announced. Sealed bids will then be publicly opened and announced. Finally, electronic internet bids will be accessed and announced.

Sale and Award: The sale and award of the Bonds will be held at the Board Room, County Courthouse, 227 South 6th Street, Council Bluffs, Iowa at a meeting of the Board of Supervisors on the above date at 1:00 P.M.

Official Statement: The Issuer has issued an Official Statement of information pertaining to the Bonds to be offered, including a statement of the Terms of Offering and an Official Bid Form, which is incorporated by reference as a part of this notice. The Official Statement may be obtained by request addressed to the County Auditor, Board Room, County Courthouse, 227 South 6th Street, Council Bluffs, Iowa or the Issuer's Municipal Advisor, Speer Financial, Inc., 531 Commercial Street, Suite 608, Waterloo, Iowa, 50701, Telephone: (319) 291-2077 and 230 West Monroe Street, Suite 2630, Chicago, Illinois, 60606, Telephone: (312) 346-3700.

Terms of Offering: All bids shall be in conformity with and the sale shall be in accordance with the Terms of Offering as set forth in the Official Statement.

Legal Opinion: The Bonds will be sold subject to the opinion of Ahlers & Cooney, P.C., Attorneys of Des Moines, Iowa, as to the legality and their opinion will be furnished together with the printed Bonds without cost to the purchaser and all bids will be so conditioned. Except to the extent necessary to issue their opinion as to the legality of the Bonds, the attorneys will not examine or review or express any opinion with respect to the accuracy or completeness of documents, materials or statements made or furnished in connection with the sale, issuance or marketing of the Bonds.

Rights Reserved: The right is reserved to reject any or all bids, and to waive any irregularities as deemed to be in the best interests of the public.

By order of the Board of Supervisors of Pottawattamie County, State of Iowa.

County Auditor, Pottawattamie County, State of Iowa

(End of Notice)

Passed and Approved this 24th day of August, 2021.

ROLL CALL VOTE

	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	○	○	○	○
_____ Tim Wichman	○	○	○	○
_____	○	○	○	○

Lynn Grobe

Justin Schultz

Brian Shea

○ ○ ○ ○

○ ○ ○ ○

ATTEST: _____
Melvyn J. Houser, County Auditor

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Shea, second by Schultz, to approve and authorize Board to sign **Resolution No. 90-2021** entitled: RESOLUTION for Transfer from Bond Series 2021B Debt Fund to Gaming Fund.

RESOLUTION NO. 90-2021

RESOLUTION for Transfer from Bond Series 2021B Debt Fund to Gaming Fund

WHEREAS, it is desired to transfer money from Bond Series 2021B Debt Fund to Gaming Fund; and

WHEREAS, said transfer is in accordance with Section 331.432, Code of Iowa; and

NOW THEREFORE BE IT RESOLVED, that the Pottawattamie County Board of Supervisors as follows:

- SECTION 1: The sum of \$6,615.00 is ordered to be transferred from Bond Series 2021B Debt Fund to Gaming Fund, and
- SECTION 2: The Auditor is directed to correct his/her book accordingly and to notify the Treasurer of this operating transfer.

Dated this 24th Day of August, 2021.

	ROLL CALL VOTE			
	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	○	○	○	○
_____ Tim Wichman	○	○	○	○
_____ Lynn Grobe	○	○	○	○
_____ Justin Schultz	○	○	○	○
_____ Brian Shea	○	○	○	○

ATTEST: _____
Melvyn Houser, County Auditor

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Shea, second by Schultz, to approve and authorize Board to sign **Resolution No. 91-2021** entitled: RESOLUTION for Transfer from Property Acquisition/ Improvement Fund to Gaming Fund.

RESOLUTION NO. 91-2021

RESOLUTION for Transfer from Property Acquisition/ Improvement Fund to Gaming Fund

WHEREAS, it is desired to transfer money from Property Acquisition/ Improvement Fund to Gaming Fund; and

WHEREAS, said transfer is in accordance with Section 331.432, Code of Iowa; and

NOW THEREFORE BE IT RESOLVED, that the Pottawattamie County Board of Supervisors as follows:

- SECTION 1: The sum of \$141,815.50 is ordered to be transferred from Property Acquisition/ Improvement Fund to Gaming Fund, and
- SECTION 2: The Auditor is directed to correct his/her book accordingly and to notify the Treasurer of this operating transfer.

Dated this 24th Day of August, 2021.

ROLL CALL VOTE

	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Tim Wichman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Lynn Grobe	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Justin Schultz	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Brian Shea	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ATTEST: _____				
Melvyn Houser, County Auditor				

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Wichman, second by Shea, to approve and authorize Board to sign **Resolution No. 92-2021** entitled: RESOLUTION for Transfer from Bond Series 2021B Debt Fund to Property Acquisition/ Improvement Fund.

RESOLUTION NO. 92-2021

RESOLUTION for Transfer from Bond Series 2021B Debt Fund to Property Acquisition/ Improvement Fund

WHEREAS, it is desired to transfer money from Bond Series 2021B Debt Fund to Property Acquisition/ Improvement Fund; and

WHEREAS, said transfer is in accordance with Section 331.432, Code of Iowa; and

NOW THEREFORE BE IT RESOLVED, that the Pottawattamie County Board of Supervisors as follows:

SECTION 1: The sum of \$1,672,805.00 is ordered to be transferred from Bond Series 2021B Debt Fund to Property Acquisition/ Improvement Fund, and

SECTION 2: The Auditor is directed to correct his/her book accordingly and to notify the Treasurer of this operating transfer.

Dated this 24th Day of August, 2021.

ROLL CALL VOTE

	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Tim Wichman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Lynn Grobe	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Justin Schultz	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Brian Shea	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ATTEST: _____				
Melvyn Houser, County Auditor				

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Shea, second by Schultz, to approve and authorize Board to sign **Resolution No. 93-2021** entitled: RESOLUTION for Transfer from American Rescue Plan Act (ARPA) Fund to Property Acquisition/ Improvement Fund.

RESOLUTION NO. 93-2021

RESOLUTION for Transfer from American Rescue Plan Act (ARPA) Fund to Property Acquisition/ Improvement Fund

WHEREAS, it is desired to transfer money from American Rescue Plan Act (ARPA) Fund to Property Acquisition/ Improvement Fund; and

WHEREAS, said transfer is in accordance with Section 331.432, Code of Iowa; and

NOW THEREFORE BE IT RESOLVED, that the Pottawattamie County Board of Supervisors as follows:

SECTION 1: The sum of \$500,000.00 is ordered to be transferred from American Rescue Plan Act (ARPA) Fund to Property Acquisition/ Improvement Fund, and

SECTION 2: The Auditor is directed to correct his/her book accordingly and to notify the Treasurer of this operating transfer.

Dated this 24th Day of August, 2021.

	ROLL CALL VOTE			
	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	○	○	○	○
_____ Tim Wichman	○	○	○	○
_____ Lynn Grobe	○	○	○	○
_____ Justin Schultz	○	○	○	○
_____ Brian Shea	○	○	○	○

ATTEST: _____
Melvyn Houser, County Auditor

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Wichman, second by Shea, to approve and authorize Board to sign **Resolution No. 94-2021** entitled: RESOLUTION for Transfer from Special Law Enforcement Fund to Property Acquisition/ Improvement Fund.

RESOLUTION NO. 94-2021

RESOLUTION for Transfer from Special Law Enforcement Fund to Property Acquisition/ Improvement Fund

WHEREAS, it is desired to transfer money from Special Law Enforcement Fund to Property Acquisition/ Improvement Fund; and

WHEREAS, said transfer is in accordance with Section 331.432, Code of Iowa; and

NOW THEREFORE BE IT RESOLVED, that the Pottawattamie County Board of Supervisors as follows:

SECTION 1: The sum of \$1,500,000.00 is ordered to be transferred from Special Law Enforcement Fund to Property Acquisition/ Improvement Fund, and

SECTION 2: The Auditor is directed to correct his/her book accordingly and to notify the Treasurer of this operating transfer.

Dated this 24th Day of August, 2021.

	ROLL CALL VOTE			
	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	○	○	○	○
_____ Tim Wichman	○	○	○	○
_____ Lynn Grobe	○	○	○	○
_____ Justin Schultz	○	○	○	○
_____ Brian Shea	○	○	○	○

ATTEST: _____
Melvyn Houser, County Auditor

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Shea, second by Schultz, to approve and authorize Board to sign **Resolution No. 95-2021** entitled: RESOLUTION for Transfer from Bond Series 2021A Debt Fund to Rural Basic Fund.

RESOLUTION NO. 95-2021

RESOLUTION for Transfer from Bond Series 2021A Debt Fund to Rural Basic Fund

WHEREAS, it is desired to transfer money from Bond Series 2021A Debt Fund to Rural Basic Fund; and

WHEREAS, said transfer is in accordance with Section 331.432, Code of Iowa; and

NOW THEREFORE BE IT RESOLVED, that the Pottawattamie County Board of Supervisors as follows:

SECTION 1: The sum of \$20,477.00 is ordered to be transferred from Bond Series 2021A Debt Fund to Rural Basic Fund, and

SECTION 2: The Auditor is directed to correct his/her book accordingly and to notify the Treasurer of this operating transfer.

Dated this 24th Day of August, 2021.

	ROLL CALL VOTE			
	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	○	○	○	○
_____ Tim Wichman	○	○	○	○
_____ Lynn Grobe	○	○	○	○
_____ Justin Schultz	○	○	○	○
_____ Brian Shea	○	○	○	○

ATTEST: _____
Melvyn Houser, County Auditor

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

4. CLOSED SESSION

Motion by Wichman, second by Shea, to go into Closed Session pursuant Iowa Code 21.5(1)(j), for discussion and/or decision on the purchase or sale of particular real estate.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Shea, second by Grobe, to go out of Closed Session.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

5. RECEIVED/FILED

- A. Salary Actions
 - 1) Jail – Payroll Status Change of David Button, Corey Little
- B. Reports
 - 1) Sheriff’s Report of Fees Collected and Disbursed for July 2021

6. ADJOURN

Motion by Wichman, second by Grobe, to adjourn meeting.
UNANIMOUS VOTE. Motion Carried.

THE BOARD ADJOURNED SUBJECT TO CALL AT 11:45 P.M.

Scott A. Belt, Chairman

ATTEST: _____
Becky Lenihan, Finance & Tax Officer

APPROVED: August 31, 2021
PUBLISH: X

Scheduled Sessions

**Jason Slack/Director, Buildings and
Grounds and Wyatt Wirges/ETI**

**Discussion and/or decision on a cost neutral change to
the scope of work concerning the Courthouse chiller for
the Courthouse Addition Project.**

ARCHITECT'S SUPPLEMENTAL INSTRUCTIONS

Project: Pottawattamie County, Iowa – Courthouse Addition

HGM Project Number: 107419E

Approved By:

Sent to:

Owner	X
Architect	X
Contractor	X
Field	
Other	

Owner: Pottawattamie County Board of Supervisors

To Contractor: Meco-Henne Contracting, Inc.

Supplemental Instruction No: ASI #002 – Chiller Modifications

Date: August 26, 2021

The Work shall be carried out in accordance with the following supplemental instructions issued in accordance with the Contract Documents without change in Contract Time. If there is a change in Contract Time or Cost, submit a Cost Summary on the Architect's Form, along with backup information with any change in contract time, before proceeding with the Work.

<input type="checkbox"/>	<u>Owner Request for Change</u>
<input type="checkbox"/>	<u>Contractor Request for Change</u>

DESCRIPTION:

See ETI's mechanical and electrical changes on the following pages.

X 

 Kimberly A. Bogatz, AIA LEED AP BD+C
 HGM Associates Inc.

Attachments: Revised Air Cooled Chiller Schedule



DATE ISSUED 08/26/2021

ASI # 002

TO Kim Bogatz
HGM Associates
640 5th Ave
Council Bluffs, IA, 51502

PROJECT Pottawattamie County Courthouse Addition

ETI PROJECT # 2019-156

ASI BY WWW/JMM

CC Shane Hoss - ETI

The work shall be carried out in accordance with the following supplemental instructions issued in accordance with the contract document without change in the contract sum or contract time. Proceeding with the work in accordance with these instructions indicates your acknowledgment that there will be no change in the contract sum or contract time.

General description of modification:

1. Sheet ME1.0 – Enlarged Mechanical/Electrical Roof Plan
 - a. Electrical Sheet Note 5 shall indicate 250A/3P breaker for ACH-2 in lieu of specified breaker size.
2. Sheet M6.1 – Mechanical Schedules
 - a. Revised Air Cooled Chiller Schedule per attached sketch.

AIR COOLED CHILLER SCHEDULE

MARK	SERVES	CAPACITY (TONS)	CHILLED WATER DATA			DESIGN AMBIENT TEMP. (°F)	ELECTRICAL DATA		MIN. EFFICIENCY (EER / IPLV)	MAX. SOUND POWER (DBA)	UNIT DIMENSIONS (L X W X H) (IN.)	WEIGHT (LBS.)	MANUFACTURER AND MODEL	NOTES
			EWT / LWT (°F)	FLOW (GPM)	P.D. (FT.)		VOLTS/ PHASE	MCA / MOP (AMPS)						
ACH-2	CHILLED WATER	101	58 / 42	147.2	3.76	95	460 / 3	224 / 250	10.10 / 17.71	95	187.5 X 88.4 X 94.3	5086	YORK YLAA0101- HE46XFBSXXX	ALL

NOTES:

1. PROVIDE SINGLE POINT POWER CONNECTION WITH CIRCUIT BREAKER DISCONNECT, SOUND BLANKETING, 115V CONVENIENCE RECEPTACLE, AND INTEGRAL ACROSS THE LINE STARTER.
2. CHILLERS SHALL USE R410A REFRIGERATION.
3. CHILLERS SHALL BE PROVIDED WITH A REMOTE EVAPORATOR PACKAGE
4. FOULING FACTOR: EVAPORATOR = 0.00010
5. NOT USED.
6. PROVIDED WITH MINIMUM OF TWO INDEPENDENT REFRIGERANT CIRCUITS. CIRCUITS SHALL BE CAPABLE OF BEING CONTROLLED AND MAINTAINED INDEPENDENTLY WITHOUT SHUTTING DOWN THE CHILLER.
7. 65 KAIC SHORT CIRCUIT CURRENT RATING.
8. REMOTE EVAPORATOR SHALL BE INSULATED PER SPECIFICATIONS.
9. CHILLER MINIMUM EER & IPLV EFFICIENCY SHALL BE 10% IMPROVED OVER CODE MINIMUM (9.562 EER/12.750 IPLV) AT AHRI 550/590 CONDITIONS.

**Jamie Petersen / GIS and/or David
Bayer / CIO**

**Discussion and or decision to approve
and fund Nearmap agreement.**

**Pottawattamie
County**



Geographic Information
Systems
223 S 6th St
Council Bluffs, IA 51501
Phone: 712.328.4885
gis@pottcounty-ia.gov

**David Bayer
CIO**

8/25/2021

Jamie Petersen GIS
and/or
David Bayer CIO

RE: Discussion and/or Decision to approve and fund Nearmap agreement for aerial photo use.

I am asking the Board to approve and fund the agreement in the amount of \$8,000 with Nearmap. Nearmap is an aerial photo provider, and this agreement will give Pottawattamie County offices, Cities and their offices, and one member from MAPA access to the Nearmap image library for one year. Access will include past and future aerial photo captures within the term.

GIS does not have this item in our budget, and cannot pay it which is why I am asking that of the Board. Nearmap flew portions of Council Bluffs in May, and we did not know the images would be available until recently. Nearmap will fly the area again next year, which would give us access to two separate flights in the term.

-Jamie Petersen

NEW SUBSCRIPTION QUOTE

Nearmap US, Inc.
 10897 South River Front Parkway, Suite 150
 South Jordan, UT 84095 USA
Phone: +1 (801) 609 7250

Customer Name	Pottawattamie County, IA	Quote Number	Q068680
Contract Commencement	Contract commences upon signing of quote.	Quote Expiry	08/31/2021
Subscription Term	12 Month	Account Rep	Bryce Hall bryce.hall@nearmap.com
Subscription Start Date	08/31/2021	Payment Term	Net 30
		Payment Method	Invoice
Bill To	Pottawattamie County, IA Jamie Petersen 227 S 6th St, Council Bluffs, Iowa, 51501 (712) 328-4869 jamie.petersen@pottcounty-ia.gov	Ship To	Pottawattamie County, IA Jamie Petersen 227 S 6th St, Council Bluffs, Iowa, 51501 (712) 328-4869 jamie.petersen@pottcounty-ia.gov

PRODUCT	ALLOWANCE	COVERAGE	SEATS
3D Viewer	NA	Nationwide	NA
Nearmap Oblique for ArcGIS	NA	Nationwide	NA
Nearmap Oblique for Government	NA	Nationwide	Unlimited
Subtotal			\$8,000.00
Estimated Tax			\$0.00
Total			USD \$8,000.00

ACCEPTANCE OF Q068680 will constitute an Agreement with Nearmap

By selecting "Yes" or signing below, you acknowledge that (a) you have read, understood and agree to the Products Agreement attached to this Quote, (b) the Product-Specific Terms which can be found at <https://www.nearmap.com/us/en/legal/product-agreements>, (c) you have the authority to agree to this New Subscription Quote and (d) you agree to pay the fees set forth herein. This New Subscription Quote constitutes a binding commitment for the Contract Term stated above. You acknowledge that the Coverage Area by Nearmap is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.

Signature / Digital Acceptance:

Date:

Full Name:

Position:

PO Number (if required):

If printed, please sign, scan and email to: orders.us@nearmap.com

Additional Terms and Conditions

1. Notwithstanding section 2.3 of the Agreement, the Licensee is permitted to make the Products available to:

(a) all county offices under the Licensee;

(b) Pottawattamie County Assessor's Office, Pottawattamie Conservation, Pottawattamie County Emergency Management, and Council Bluffs Water Works;

(c) The cities in Pottawattamie County, including but not limited to, the city of Council Bluffs and Council Bluff's offices; and

(d) a designated individual at the Metropolitan Area Planning Agency (MAPA).

2. The Licensee is responsible and liable for all acts and omissions of the participating governments and/or entities set forth in paragraph 1 above in connection with their participation under the Agreement.



PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT BY EXECUTING A QUOTE, YOU AGREE TO BE BOUND BY THIS PRODUCTS AGREEMENT, THE QUOTE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE, YOU MUST NOT ACCEPT THIS PRODUCTS AGREEMENT AND NOT USE ANY NEARMAP PRODUCTS AND SERVICES.

PRODUCTS AGREEMENT

Recitals

- A. Nearmap is a provider of aerial photography and associated products and services.
- B. Nearmap agrees to supply the Licensee with the Products described in the Quote, subject to the terms of this agreement, the Additional Terms and Conditions, Product-Specific Terms, any Schedules and the Quote which together constitute the legal agreement between the Licensee and Nearmap (the "**Agreement**").

Definitions of capitalized words are set out in section 18 of the Agreement.

1. GRANT OF LICENSE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fees, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable license for the Term to use the Products for and to the extent of the Permitted Purpose (the "**License**").
- 1.2 **Authorized Users** The Products available under this License are only to be used by the total number of Authorized Users. The Licensee shall implement reasonable controls to ensure that it does not exceed the number of Authorized Users. If the number of users exceeds the total number of Authorized Users, the Licensee will be in breach of this Agreement.
- 1.3 **Renewal** Upon the expiration of the initial Term, this Agreement subject to any amendments to this Agreement required by Nearmap, shall be renewed automatically for successive renewal terms of twelve (12) months each (each a "**Renewal Term**") unless terminated by either party by providing at least 30 days' written notice of its intention not to renew this Agreement prior to the expiry of the initial Term or any current Renewal Term.
- 1.4 **Replacement Product** Nearmap may from time to time supply the Licensee with a replacement Product of no lesser quality than the previously supplied Product at its absolute discretion. If requested by Nearmap, the Licensee must stop using any previously supplied Product and use the replacement Product from the date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by displaying the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee uses, copies, modifies or distributes. Unless otherwise permitted in writing, the Licensee must not remove or cause to be removed any Nearmap logo, watermark or other Nearmap attribution in any Product or Derivative Works.
- 1.6 **Data Use for Government Products** Nearmap measures data usage by the Licensee under this License for Government Products. When using Government Products, Nearmap's Fair Use Policy regulates the Licensee's consumption of data during the Term (or Renewal Term) the following conditions also apply to the Licensee's use of Government Products:
 - (a) the amount of data used by the Licensee on the Government Products will be monitored and then calculated at the end of every Term or Renewal Term based on the total data of all users who access and use the Licensee's Nearmap account during that Period; and
 - (b) if the Licensee elects to download and/or export Government Products available to the Licensee on the Website, this will be applied to the calculation of the Licensee's use of the Government Products.
- 1.7 **Allowance for Non-Government Products** Non-Government Products Licensed to the Licensee may be subject to additional Allowance, Periodic Allowance or Periodic Data Allowance terms that are published in the Product Specific Terms and if applicable the Periodic Allowance Section.
- 1.8 **Unavailability** Subject to section 12, if a Product is not available for a period of 3 consecutive days, the Term will be extended by the period of such unavailability.

2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **Permitted Purpose** The Products must only be used for the Permitted Purpose.
- 2.2 **No right to distribute, transfer, resell, assign or sublicense** This License is granted only to the Licensee. The Licensee must not distribute, transfer, resell, assign, rent, lease or sublicense any Product or any of the Licensee's rights under this License without Nearmap's prior written consent.
- 2.3 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Product available in any medium or manner to any third party (including but not limited to the Licensee's subsidiaries, affiliates, any lower or higher tiered governments and any neighbouring local government).
- 2.4 **Employees** The Licensee may make Products available to any employee of the Licensee, subject to that person complying with the terms of the Agreement as if they were a party to it and the total number of Authorized Users has not been exceeded. Such employees are deemed to be Authorized Users. The Licensee is responsible and liable for any person who uses the Licensee's account access details or uses Products made available to the Licensee in breach of this Agreement, including, without limitation, for any additional fees that become payable if the Licensee exceeds the number of Authorized Users.

- 2.5 **No machine learning** The Licensee must not conduct machine learning work in connection with this Agreement or any Products, which includes but is not limited to any:
 - (a) machine learning models (including the model form and model parameters);
 - (b) outputs of machine learning models;
 - (c) software that processes or transforms input data for training a machine learning model or getting a prediction from a machine learning model into a format suitable for training or making such prediction; or
 - (d) software used to train a machine learning model or compute outputs of a machine learning model for a given set of input data.
- 2.6 **No caching and creation of database** Except as expressly permitted under this Agreement, the Licensee is not permitted to:
 - (a) use its access to the Products under this Agreement for the purposes of creating a database of imageries for resale, distribution, sub-license or other commercial purposes and mass downloads or bulk feeds of any imagery; and
 - (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
- 2.7 **Restriction on integration methods** The Licensee is only permitted to use API integration method authorized by Nearmap, or other integration methods authorized by Nearmap in writing, including but not limited to integration with the Licensee's or other third party platforms or software.
- 2.8 **Limits on use of Website** In the Licensee's use of the Website, the Licensee must not (without the prior written consent of Nearmap):
 - (a) provide a link to another URL;
 - (b) upload content or other information to the Website (except as necessary to use the Products);
 - (c) do anything to damage, interfere or disrupt access to the Website or do anything which might impair its functionality;
 - (d) use the Website in any way to send unsolicited email (commercial or otherwise) or any other material for marketing or publicity purposes;
 - (e) publish, post, distribute, disseminate or otherwise transmit, defamatory, offensive, infringing, obscene, indecent or other unlawful or objectionable or confidential material or information;
 - (f) make available, upload or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "worms" or any other harmful software;
 - (g) remove any content or information from the Website, other than that permitted under the terms of this License;
 - (h) falsify the true ownership of a Product or other material or information made available via the Website;
 - (i) obtain or attempt to obtain unauthorized access, through whatever means, to the Website;
 - (j) use the Website other than in accordance with this Agreement;
 - (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts; or
 - (l) provide or allow access which exceeds the total number of Authorized Users in connection with use of the Product.
- 2.9 **Breach** If the Licensee breaches any of sections 2.1 to 2.8 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with section 6.2, restrict the Licensee's access to the Products, and take any other steps available to it at law.

3. THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES

- 3.1 **Authorized Users** Any password/ID issued by Nearmap to an Authorized User is personal and confidential to that Authorized User. If Nearmap suspects that any password/ID is being used by an unauthorized person, by a different Authorized User to the person to whom it was issued or the number of Authorized Users has been exceeded, Nearmap may:
 - (a) cancel that password/ID;
 - (b) restrict the Licensee's access to the Product to low resolution imagery, or apply any other restrictions on access that Nearmap determines in its absolute discretion;
 - (c) immediately cease the Licensee's access to the Product;
 - (d) require the Licensee to pay for any additional fees due based on the standard Nearmap Fees for the applicable Product, in respect of any such unauthorized use; and/or

- (e) exercise any other right available to Nearmap under the terms of this Agreement or at law.
- 3.2 **Downtime** Nearmap will use reasonable efforts to ensure that the Website remains available but cannot guarantee that this will be the case at all times. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal Operational Hours to ensure optimal uptime of the Website. When Nearmap becomes aware of any Fault, Nearmap will use reasonable efforts to:
- allocate such resources as may be necessary to remedy the Fault; and
 - otherwise take all reasonable steps to remedy the Fault so as to minimize any disruption to the Licensee's use of the Products.
- 3.3 **Expiry** The Licensee's License will expire at the end of the Term unless renewed in accordance with section 1.3 and may be suspended or terminated in accordance with section 6.2 if the Licensee is in breach of this Agreement.
- 3.4 **Unauthorized Use** Licensee shall take reasonable steps to prevent unauthorized access to the Products, including without limitation protecting its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the Products or breach of its security and shall use best efforts to stop said breach and minimize the adverse impact of said breach on Nearmap.
- 3.5 **Audit** During the Term of this Agreement and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain records regarding its use of the Products according to its record keeping policies and procedures. The Licensee shall permit Nearmap (or its auditors) access to the Licensee's records pertaining to the Licensee's use of the Products. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended.
- 3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant, (b) recover the reasonable cost of the audit if additional Fees exceed five (5) per cent of the Fees paid during the audit period and (c) terminate this Agreement in accordance with section 6. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice or such other period agreed between the parties.
4. **FEES**
- 4.1 **Fees** The Fees payable by the Licensee are set out in the Quote.
- 4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner and by the due date as set out in the Quote at the beginning of each Term unless otherwise agreed by Nearmap. Where the Fees are payable by credit card, the Licensee authorizes Nearmap to charge the Licensee's credit card for all purchased Products listed in the Quote for the initial Term and any Renewal Term.
- 4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable except as expressly set out in the Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.
- 4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "Taxes"). Licensee is responsible for paying all Taxes except those assessable against Nearmap based on its income. Nearmap will invoice Licensee for such Taxes if Nearmap believes it has a legal obligation to do so and Licensee agrees to pay such Taxes if so invoiced.
- 4.6 **Late Payment** If a scheduled Fee payment is still overdue after seven (7) days' notice from Nearmap to remedy the payment default, the Licensee agrees that Nearmap may charge the Licensee a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this License.
- 4.7 **Amendments** Fees of the relevant Product may only be increased at the end of the Term (including any Renewal Term) subject to Nearmap and the Licensee agreeing in writing.
5. **THE LICENSEE'S WARRANTIES**
- 5.1 **Warranty** The Licensee warrants that:
- any information the Licensee supplies to Nearmap in respect of the Agreement is complete and correct. The Licensee must keep Nearmap informed of any change to the Licensee's information provided to Nearmap, including any change to the Licensee's contact details, or the details of a credit card used for payment;
 - the Licensee will immediately notify Nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by Nearmap;
 - the Licensee has the power to enter into this Agreement and to perform the obligations under it; and
 - the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
 - License;
 - Products; and
 - Website.
6. **TERMINATION AND EXPIRY**
- 6.1 **Initial Term** This Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated earlier in accordance with the terms of this Agreement or renewed under section 1.3.
- 6.2 **Termination by Either Party** Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- the other party breaches any of its obligation under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so;
 - the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
 - the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof or admits in writing its inability to pay its debt generally as they become due.
- 6.3 **Termination by Nearmap** Notwithstanding anything else in the Agreement but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee 10 Business Days' notice, to terminate the Agreement and the License.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
- the License immediately terminates and the Products will no longer be available to the Licensee;
 - The Licensee must immediately destroy, delete or return to Nearmap all Products; and
 - subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.
- 6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee. The Licensee will be liable for any reasonable legal costs incurred by Nearmap in enforcing its rights following termination of this Agreement.
- 6.6 **Continuing obligations** After expiry or termination of the Agreement or a License, sections 1.5, 2, 4, 6.5, 7, 8, 9, 10, 13, 14, 15, and 17 will still be binding on the Licensee in relation to Products licensed or obtained during the Term.
7. **INTELLECTUAL PROPERTY**
- 7.1 **Ownership** Unless otherwise indicated, the Website, the Products, the Content, and all associated Intellectual Property Rights, data, information and software are owned by Nearmap and are protected by copyright, moral rights, trademark and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website, any Product or Content will pass or be licensed to the Licensee.
- 7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in the Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited non-exclusive, non-transferrable, non-sublicensable license to reproduce and display Nearmap trademarks only to the extent necessary to comply with the Licensee's obligations under the Agreement. Any such reproduction and display of those marks must comply with the policies and rules Nearmap makes available to the Licensee from time to time.
- 7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Products and Content embedded in a Derivative Work, but all other rights in and to the Derivative Work will belong to the Licensee.
8. **THIRD PARTY PROVIDERS**
- 8.1 Nearmap engages Third Party Providers in order to provide the Products. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on Licensee directly or indirectly by imposition on Nearmap, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. The Licensee acknowledges that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with section 9 of the Agreement, Nearmap's liability is reduced to the extent that loss or damage of any kind is caused or contributed to, by Third Party Providers. For the Licensee's convenience, Nearmap has set out in this section 8 links to the terms and conditions of these Third Party Providers with which the Licensee is required to comply. The Licensee further acknowledges that by entering into the Agreement, the Licensee is deemed to accept the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.
- Google** Nearmap engages Google to supply navigation and geo-location data, and related content. By entering into the Agreement, the Licensee agrees to the Google Terms of Service as they apply to the Licensee. https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html;
 - Amazon Web Services (AWS)** Nearmap engages Amazon Web Service, Inc. to provide services (the "AWS Services") which enables delivery of the Products. By entering into the Agreement, the Licensee agrees to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it

applies to the Licensee. Use of the Products is also subject to the Licensee's compliance with the following AWS policies:

- (i) Privacy Policy
(<http://aws.amazon.com/privacy/>)
- (ii) Acceptable Use Policy
(<http://aws.amazon.com/aup/>)
- (iii) Terms of Use
(<http://aws.amazon.com/terms/>)
- (iv) Service Terms
(<http://aws.amazon.com/serviceterms/>)
- (v) Trademark Guidelines
(<http://aws.amazon.com/trademark-guidelines/>)

- (c) **NASA/NCAS** By entering into the Agreement, the Licensee agrees to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/us/en/legal/copyright/>).

9. WARRANTY AND LIABILITY

9.1 **Warranty** Nearmap agrees to use industry standard GPS to ensure captured imagery has accurate geographical positioning.

9.2 **DISCLAIMER OF WARRANTIES** OTHER THAN AS SET FORTH IN SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, AGENTS, MANDATARIES AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COURSE OF DEALING OR PERFORMANCE.

9.3 **NO REPRESENTATIONS** WHILE NEARMAP USES REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF THE CONTENT, THE PRODUCTS AND THE WEBSITE, NEARMAP MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES AS TO THE ACCURACY, CORRECTNESS OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE. THE PRODUCTS AND THE WEBSITE ARE SUBJECT TO ERRORS, OMISSIONS, INACCURACIES AND DISTORTIONS AND NEARMAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR ANY CLAIMS MADE BY OR ARISING OUT OF, ANY PERSON OR ENTITY SEEKING TO RELY ON ANY OF THE PRODUCTS OR THE WEBSITE.

9.4 **LIMIT OF LIABILITY** NEARMAP'S LIABILITY FOR: (A) A BREACH OF A WARRANTY UNDER SECTION 9.1; OR (B) A BREACH OF A REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE WHICH IS IMPLIED OR IMPOSED IN RELATION TO THIS LICENSE UNDER LEGISLATION AND CANNOT BE EXCLUDED, WILL BE LIMITED TO, AT NEARMAP'S OPTION, REPLACING OR REPAIRING THE PRODUCTS OR SUPPLYING PRODUCTS EQUIVALENT TO THE RELEVANT PRODUCTS, OR PAYING THE COST OF REPLACING OR REPAIRING THE PRODUCTS.

9.5 **NO LIABILITY FOR CLAIMS** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS, MANDATARIES OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE, THE CONTENT OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EXTRACONTRACTUAL LIABILITY, OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR OR CORRECTION REQUIRED DUE TO THE LICENSEE'S USE OF THIS WEBSITE, THE CONTENT OR THE PRODUCTS. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP.

9.6 **AGGREGATE LIMIT** IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEARMAP, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), EXTRACONTRACTUAL LIABILITY, PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE PRODUCTS, THE CONTENT OR THE WEBSITE EXCEED ANY COMPENSATION OR FEE THE LICENSEE HAS PAID, IF ANY, TO NEARMAP FOR ACCESS TO OR USE OF THE PRODUCTS OVER THE 12 MONTH PERIOD PRIOR TO THE ALLEGED DEFAULT, BREACH OR EVENT GIVING RISE TO THE LIABILITY.

9.7 **Third Party Providers** The Licensee acknowledges that Nearmap relies on the services of Third Party Providers in order to supply the Products and related services. Without limiting any of the above, to the fullest extent permitted by applicable law, Nearmap will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by a third party service provider.

9.8 **Indemnity** To the extent permitted by law, the Licensee agrees to indemnify Nearmap and its directors, officers, employees, agents, mandataries and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses and costs (including reasonable attorney's fees and costs) arising from or out of:

- (a) the Licensee's actual or alleged breach of any provisions of this Agreement;
- (b) the Licensee's use of the Product for any purpose; and

- (c) the Licensee's use of, or any third party's use of, or inability to use, any Derivative Works, including without limitation, any output from the Derivative Works.

9.9 **Notice of claim** Nearmap will provide the Licensee with notice of any claim or allegation under section 9.8, and Nearmap has the right to participate in the defense of any such claim at its expense.

10. COPYRIGHT COMPLAINTS

10.1 Subject to section 9, if any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products in accordance with this License infringes their copyright ("**Infringement Claim**"), Nearmap will defend the Licensee against the Claim and pay any settlement to which Nearmap consents or final court-awarded damages for which the Licensee is liable.

10.2 The Licensee must:

- (a) promptly notify Nearmap of any such Infringement Claim;
- (b) not make any admissions in relation to the Infringement Claim without Nearmap's prior written consent;
- (c) permit Nearmap to conduct the defense of the Infringement Claim including all negotiations for settlement; and
- (d) provide Nearmap with any assistance reasonably requested to allow Nearmap to defend the Infringement Claim.

10.3 Nearmap will have no liability for any Infringement Claim:

- (a) that arises from any:
 - (i) use of the Product in violation of this Agreement;
 - (ii) modification of the Product by anyone other than Nearmap or a party authorized by Nearmap in writing to modify the portion of the Product applicable to the Infringement Claim; or
 - (iii) third-party products, services, hardware, software or other materials, or a combination of these with the Products, which would not be infringing without this combination; or
- (b) if the Licensee fails to comply with section 10.2.

10.4 To the maximum extent permitted by law, this section 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party Infringement Claims brought against the Licensee in relation to an infringement of Intellectual Property Rights.

11. PRIVACY POLICY

11.1 Nearmap will collect, use and disclose any personal information supplied by the Licensee as set out in Nearmap's Privacy Policy, as amended from time to time, and currently available at <https://www.nearmap.com/us/en/legal/privacy-policy>. The Licensee hereby consents to those collections, uses and disclosures.

11.2 To the maximum extent permitted by law, by entering into this Agreement, the Licensee expressly consents to receiving general emails relating to product updates, new products or anything related to the usage of the product from Nearmap but prior written consent is required to receive by email direct marketing communications from Nearmap.

11.3 By entering into this Agreement, the Licensee acknowledges that personal information provided by the Licensee in the course of accessing Products (including, without limitation, credit or debit card details provided by the Licensee for the purpose of paying Nearmap) may be disclosed to and held by one or more of Nearmap's third party suppliers and partners (including, without limitation, providers of payment processing services), and used by those third parties in connection with the supply of Products. Nearmap will have no liability whatsoever with respect to any personal information held by a third party in connection with the supply of Products.

12. FORCE MAJEURE

12.1 **Force Majeure Event** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an act of war, terrorism, hurricane, earthquake, other act of God or of nature, strike or other labor dispute, riot or other act of civil disorder, embargo, or other cause beyond the performing party's reasonable control ("**Force Majeure Event**"):

- (a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
- (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations under this Agreement because of the Force Majeure Event.

12.2 **Notice of Force Majeure Event** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:

- (a) Promptly (when reasonably possible to do so) give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
- (b) take all reasonable steps to overcome the effects of the Force Majeure Event; and
- (c) resume compliance as soon as practicable after the Force Majeure Event no longer affects it.

13. CONFIDENTIALITY

13.1 The Licensee must not use any Confidential Information for any purpose not expressly permitted hereunder. The Licensee will disclose Confidential Information only to its employees who have a need to know for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Licensee's duty hereunder. The Licensee will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as it would protect its own confidential or proprietary information of similar nature and with no less than reasonable care.

14. NOTICES

14.1 All notices and consents will be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when (a) personally delivered; (b) sent by registered or certified mail (postage prepaid, return receipt requested); (c) sent by nationally recognized private courier (with signature required and all fees prepaid); or (d) sent by email with confirmation of transmission. Notices must be sent to the Licensee at the address set forth in the Quote (or if none is specified, the address to which Nearmap sends invoices) and for Nearmap to 10897 South River Front Parkway, Suite 150 South Jordan, UT 84095, USA, or at another address as a party may designate in writing.

15. TECHNOLOGY EXPORT

15.1 The Licensee shall not: (a) permit any third party to access or use the Product in violation of any U.S. or Canadian law or regulation; or (b) export any software provided by Nearmap or otherwise remove it from the United States or Canada except in compliance with all applicable U.S. and Canadian laws and regulations. Without limiting the generality of the foregoing, the Licensee shall not permit any third party to access or use the Product in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria) or a Canadian embargo.

16. NEARMAP NOW

16.1 **Survey** During the Term, the Licensee may request a survey of an area which is not covered (in its entirety or in part) by the Coverage Area ("Survey"). The Licensee must provide a detailed description of the area that is to be covered by the Survey and which is to be included in the Survey Specification. Upon receipt of such a request in writing, Nearmap may, in its absolute discretion, agree to provide the Survey to the Licensee for a Survey Fee.

16.2 **Delivery of Survey** Subject to sections 12 and 16.1, Nearmap will deliver the Survey to the Licensee by uploading the Survey to the Website within 6 months of the date on which Nearmap receives payment of the Survey Fee in full from the Licensee. Nearmap will notify the Licensee in writing once the Survey has been uploaded to the Website.

16.3 **Availability to other Nearmap customers** Nearmap may, at its absolute discretion, allow other customers of Nearmap to access the Survey on the Website.

16.4 **Refund of Survey Fee** If the Licensee is not in breach of the Agreement and Nearmap elects to terminate the Agreement under section 6.3 prior to delivery of the Survey, Nearmap will refund the Survey Fee to the Licensee.

16.5 **Other Products** This Section 16 will not be applicable to the Licensee if the Licensee has not purchased a Survey.

17. MISCELLANEOUS TERMS

17.1 **Nearmap customer** Licensee grants Nearmap the right to use Licensee's name and logo to identify as a Nearmap customer for marketing or promotional purposes in public or private communications with our existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to us from time-to-time.

17.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.

17.3 **Precedence of Documents** This Agreement is comprised of:

- the Additional Terms and Conditions;
- the Quote;
- any Product-Specific Terms; and
- this products agreement.

If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence.

17.4 **Independent Contractors** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that neither party's employee or contractor is an employee of the other party.

17.5 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason for authorship.

17.6 **Waiver** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

17.7 **Severability** If one or more of the terms of the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.

17.8 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.

17.9 **Assignment** This Agreement shall not be assigned by either party without the prior written consent of the other party which shall not be unreasonably withheld; provided, however, that Nearmap may, upon written notice to the Licensee, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of Nearmap, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Nearmap is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

17.10 **Entire Agreement** This Agreement:

- comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and

(b) supersedes any prior agreement or understanding on anything connected with that subject matter.

17.11 **Counterparts** This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument. This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, Nearmap and the Licensee.

17.12 **Language** The parties have expressly agreed that this Agreement and all ancillary agreements, documents or notices relating thereto be drafted solely in the English language. Les parties aux présentes ont expressément convenu que ce accord et toute autre convention, document ou avis y afférent soient rédigés en anglais seulement.

17.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee is carrying on business applicable to agreements made and to be entirely performed within that state, without resort to its conflict of law provisions.

18. DEFINITIONS

In this Agreement:

Additional Terms and Conditions means the additional terms and conditions (if any) set out in the Quote.

Affiliate means, with respect to Nearmap, any entity that controls or is controlled by Nearmap, or is under common control with Nearmap. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least fifty per cent (50%) of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

Allowance means any usage allowance the Licensee is permitted to use and/or drawn down against for any Licensed Non-Government Products as specified the Quote.

API means application programming interface.

Authorized User means the number of persons specified in the "Seats" section of the Quote, who have been granted access to the Product by the Licensee pursuant to the term and conditions of this Agreement and who either has been assigned a unique Nearmap user login credential or whom the Licensee has assigned a user login credential that enables access to the Product.

Business Days means any day other than a Saturday, a Sunday or a recognised public holiday in Utah, USA.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Commencement Date means (a) for New Subscription Quotes, the date as specified in the "Contract Commencement" section or the "Subscription Start Date" section of the Quote, whichever is later, or (b) for Renewal Quotes or Amendment Quotes, the date as specified in the "Subscription Start Date" section of the Quote.

Commercial Purpose means to distribute, transfer, sell, sub-license or pass possession of any Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Licensee.

Confidential Information means the terms of this Agreement, the pricing, and any other information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of Nearmap or its representatives or related bodies corporate which is disclosed to, learnt by or accessed by the Licensee in connection with the Agreement, whether before or after the Licensee entered into the Agreement, whether orally, electronically, in writing or otherwise, but excludes information which:

- is or becomes part of the public domain otherwise than as a consequence of a breach of the Agreement;
- the Licensee has obtained from a source other than Nearmap which source is entitled to disclose it; or
- the Licensee has developed or acquired independently before the date of the Agreement, and can provide reasonable proof.

Content means any content made available by or on behalf of Nearmap to the Licensee in connection with the License, whether or not through the Website or an API.

Coverage Area means the area specified in the "Coverage" section of the Quote for which Nearmap has available Products, which may cover part or all of that area and which may cover part (but not all) of the area covered by the Survey.

Derivative Work means any new work created by or for the Licensee that incorporates, embeds or includes all or part of a Nearmap Product or Content.

Fair Use Policy means the policy as attached to the Quote.

Fault means any fault, failure, error or defect which prevents the Licensee from accessing the Products, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond Nearmap's reasonable control or any conduct or activity undertaken by the Licensee, the Licensee's employees or agents or mandataries.

Fees means the fees specified in the Quote payable by the Licensee for the License, or as otherwise agreed in writing between Nearmap and the Licensee.

Government Products means any Products specified in the Quote that are described as "Nearmap Vertical for Government" and "Nearmap Oblique for Government" and includes any other Products offered by Nearmap for government customers only where use of its License is connected to the Fair Use policy.

Intellectual Property Rights includes all industrial and intellectual property rights throughout the world including copyright, moral rights, trademarks, patents, rights to protect confidential information and any other similar rights.

Late Payment Fee means a fee, as notified by Nearmap to the Licensee, corresponding to the costs incurred by Nearmap (including, without limitation, administrative and other costs) in recovering any payment not made by the Licensee on the due or scheduled date for payment. Late fees incur interest at the rate of 1.5% per month (being 18% per year).

License means the license granted in section 1.1.

Licensee means the person or entity specified in the "Customer Name" section of the Quote.

Nearmap means Nearmap US, Inc.

Non-Government Products means all Products specified in the Quote that do not fall under the definition of Government Products.

Operational Hours means 9am to 5pm PT.

Periodic Allowance or **Periodic Data Allowance** means the data allowance specified in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

Periodic Allowance Section means section 1.6 (or its equivalent) in the most current version of the products agreement currently located at [here](#).

Permitted Purpose means the use of Products by the Licensee for internal purposes in the Licensee's ordinary business, and at all times excludes any:

- (a) Commercial Purpose;
- (b) Unlawful Purpose;
- (c) Integration or attempt to integrate the Product in an internal system of the Licensee or of a third party; and
- (d) Redistribution or copying of files, images, photographs or making such files, images or photographs available in any medium or manner that is contained in the Products to any third party (except as expressly permitted under this Agreement).

Products means any Nearmap products specified in the Quote (and further described on the Website) and, if applicable, the Survey. For the avoidance of doubt, Products include Content.

Products Specific Terms means additional terms and conditions that apply to certain Products, currently located [here](#).

Quote the document produced after the Licensee places an initial order for the Product(s), requests any changes to its License, or renews its License, which may be titled "New Subscription Quote", "Renewal Quote" or "Amendment Quote".

Schedule means a schedule to this Agreement, where such schedule has been incorporated by reference to form part of this Agreement.

Subscription Period means the period stated in the "Subscription Period" column of the Quote.

Subscription Start Date means the date specified in the "Subscription Start Date" section of the Quote.

Survey has the meaning (if any) given to that section 16.1.

Survey Fee means the fee for the Survey as agreed in writing between Nearmap and the Licensee.

Survey Specification means the survey specification referred to in the Quote.

Term means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date. Where a Subscription Period is stated on the Quote, "Term" means the Subscription Period.

Third Party Providers means third party providers of products and services to Nearmap.

Unlawful Purpose means any unlawful purpose, including but not limited to stalking, harassing or intimidating any person or engaging in misleading or deceptive conduct.

Website means all pages and sub-sites available within the nearmap.com domain.

FAIR USE POLICY

General

1. It is important to Nearmap that all customers are able to access the Products and Services. Accordingly, we have devised a Fair Use Policy that applies to the data usage of the Products and Services.
2. In this Fair Use Policy:
 - a. **Excessive Use** has the meaning given to that term in section 7 of this Fair Use Policy;
 - b. **Fair Use Policy** means this policy;
 - c. **Nearmap, we, us** or **our** means Nearmap US, Inc.;
 - d. **Products** has the meaning given to that term in Your Nearmap Agreement;
 - e. **Services** has the meaning given to that term in Your Nearmap Agreement;
 - f. **You** or **Your** means any customer of Nearmap;
 - g. **Your Nearmap Agreement** means the agreement pursuant to which Nearmap provides You with various products and services; and
 - h. **Unreasonable Use** has the meaning given to that term in section 5 of this Fair Use Policy.
3. We reserve the right to vary the terms of this Fair Use Policy from time to time.
4. This Fair Use Policy is in addition to Your Nearmap Agreement and in the event of any inconsistency between the terms of this Fair Use Policy and the terms and conditions of Your Nearmap Agreement, Your Nearmap Agreement prevails.

Unreasonable Use

5. We consider Your use of the Products and Services unreasonable where You use it in a manner which is reasonably considered by Nearmap to be fraudulent use, to be contrary to Your Nearmap Agreement or to adversely affect other Nearmap customers' use of or access to the Products and Services.
6. Among other things, "fraudulent use" includes resupply of the Products and Services without Nearmap's consent so that someone else may access or use the Products and Services or take advantage of the Products and Services.

Excessive Use

7. Excessive Use is a continuing and unreasonably disproportionate use of the Products and Services when compared to other average individual named users.

Nearmap's Rights

8. Where Your use of the Products and Services constitutes Unreasonable Use and/or Excessive Use, Nearmap may contact You to discuss changing Your usage pattern so that it conforms with this Fair Use Policy, or to upgrade to a more suitable Product or Service (if applicable).
9. If, after Nearmap has contacted You, Your Unreasonable Use and/or Excessive Use continues, Nearmap may, without further notice to You:
 - a. restrict Your access to low resolution imagery for the remainder of the month; and/or
 - b. restrict Your access to low resolution imagery for the remainder of the month until Your data allowance is reset at the beginning of the next month (if applicable); and/or
 - c. restrict Your access for the remainder of the month; and/or
 - d. restrict Your access to Nearmap until Your data allowance is reset at the beginning of the next month (if applicable); and/or
 - e. immediately cease Your access to Nearmap; and/or
 - f. exercise any other right available to Nearmap under the terms of Your Nearmap Agreement.

David Bayer/CIO

Update on Microsoft 365 Project

John Rasmussen/County Engineer

**Approve grading contract with Lee
Construction and authorize the Chairman
to sign the contract and bond.**

AGREEMENT

This AGREEMENT is made and entered this 26 day of AUGUST, 2021, by and between Pottawattamie County, Iowa, hereinafter called the Owner, and of Lee Construction, Inc. of Glenwood, Iowa, hereinafter called the Contractor, with said Agreement to be effective when approved and executed by the Owner.

Whereas the Contractor on the 10th day of August 2021, did submit a proposal to the Owner on certain Plans and Specifications entitled ***“Pottawattamie County Roads Operation Center – Earthwork and Erosion Control Plans”***, a copy of which Proposal is hereto attached and made a part hereof, the parties hereto do hereby, in consideration of the mutual covenants hereinafter contained, agree with each other as follows:

1. The Contract Documents include the Notice to Bidders, Instructions to Bidders, General Conditions, Supplemental Specifications, Special Provisions, Proposal, Agreement, Bonds, Standard Details, Construction Drawings, Addenda and Modifications are a part of this Contract the same as if each had been fully set out and attached hereto.
2. The Contractor agrees to furnish all labor, mechanics for labor, tools, materials, and equipment to complete the construction under this Contract in a good and workmanlike manner in accordance with the Plans and Specifications.
3. The Owner agrees to pay the Contractor in accordance with the provisions of said plans and specifications and the accepted proposal.
4. It is mutually agreed by each party hereto that all provisions of said plans and specifications shall be strictly complied with and conformed to the same as if rewritten herein, and that no substitutions or changes in said plans and specifications shall be made except upon written consent of the Owner, and such allowance shall in no manner be construed to release either party from any specified or implied obligation of said plans and specifications.

- 5. The Contractor shall complete the work under this Contract within the time allotted by the Notice to Bidders or by an approved extension thereof. If the Contractor shall fail to do so, then the Owner shall be entitled to deduct from monies owed the Contractor for all architect and engineering fees associated with additional services charged at an hourly rate in addition to liquidated damages an amount not to exceed \$500 for each and every calendar day that the Contractor is in default of substantial completion of the work or an extension thereof.

IN WITNESS WHEREOF, we, the contracting parties by our agents hereto affix our signatures.

Executed for Contractor:

By: X Michael R. Lep
PRESIDENT
(Title)

ATTEST: (Witness)

Anna Lee

8/26/2021
Date Signed

Bonds and Insurance Approved By:

County Attorney: Matt Wilber

Executed by County:

By: Scott Belt, Chair, Pottawattamie County Board of Supervisors

ATTEST: (Witness)

_____ Date Signed

Additional Members of the Board:

LEE CONST.

BID PROPOSAL

TO: **John Rasmussen**
Pottawattamie County Engineer
Council Bluffs, Iowa

PROJECT: Pottawattamie County Roads Operation Center – Earthwork and Erosion Control Plans

I, or we, the Undersigned hereby propose to complete the above work, furnishing all materials, labor and service therefore, and all according to the DRAWINGS and PROJECT MANUAL as prepared by HGM ASSOCIATES INC., 640 5th Avenue, Council Bluffs, IA 51501, dated July 2021, for the sum set forth below, subject to all addenda officially issued by the Engineer prior to bidding.

The Undersigned acknowledges that the following Addenda were received and considered in the preparation of this proposal, and their receipt and inclusion as a part of this proposal is hereby acknowledged.

ADDENDA NO.	DATED
<u>1</u>	<u>7/23/2021</u>
<u>2</u>	<u>8/5/2021</u>
<u>3</u>	<u>8/6/2021</u>
<u>4</u>	<u>8/7/2021</u>
<u>5</u>	<u>8/9/2021</u>

The Undersigned agrees, upon receipt of written notice of intent to award the Contract, that he will enter into a contract within 15 days of award by the Pottawattamie County Board of Supervisors.

Within 48 hours from when bids are opened the undersigned agrees to submit a list of sub-contractors that they intend to use for the work.

Reasonable allowance will be made for delay in progress of work if cause by any act or neglect of the Owner or by any authorized agent of the Owner, by changes ordered in the work, by fire, by unavoidable casualties or causes beyond the Contractor's control

The undersigned agrees that withdrawal of this Bid Proposal, or failure to sign the Agreement or furnish a satisfactory Performance Bond and Payment Bond within time hereinabove set forth shall automatically bar Undersigned from any further consideration and terminate any and all rights Undersigned may have acquired in, by, or through this Bid or Proposal.

No bidder may withdraw their proposal within 60 days after the bid opening.

Pottawattamie County, Iowa
Roads Operation Center – Earthwork
and Erosion Control Plans

HGM No. 105120

1 The earliest completion date is very important to the Owner. The Undersigned agrees that the
2 work can begin immediately and that the project be substantially complete by **November 23, 2021**.
3 If the Contractor shall fail to do so, the Contractor agrees to pay the Owner as liquidated damages
4 and not as a penalty, the sum of **\$500.00** for each and every calendar day that the Contractor is in
5 default of substantial completion of the work under this Contract.
6

ITEM NO.	ITEM CODE	DESCRIPTION	ESTIMATED QUANTITY	BID UNIT PRICE	UNIT PRICE EXTENSION
1.	2010-1.08-D-1	STOCKPILE AND RESPREAD TOP SOIL	9,000.0 CY	1.75	15,750.00
2.	2010-1.08-J-2	REMOVE CMP CULVERT	200.0 LF	12.50	2,500.00
3.	9040-1.08-D	FILTER SOCK	2,190.0 LF	2.30	5,037.00
4.	9040-1.08-N	SILT FENCE	2,340.0 LF	2.00	4,680.00
5.	9040-1.08-O-1	STABILIZED CONSTRUCTION ENTRANCE	123.0 SY	12.80	1,574.40
6.	4030-1.08-A-1	CMP CULVERT, 36-INCH, STRUCTURAL STEEL ROUND PIPE 3" X 1" OR 5" X 1" CORRUGATIONS, 12 GAGE	324.0 LF	115.00	37,260.00
7.	4030-1.08-B	METAL PIPE APRON, 36-INCH	2.0 EA	1875.00	3,750.00
8.	4030-1.08-D	METAL PIPE APRON GUARD	2.0 EA	2000.00	4,000.00
9.	2010-1.08-E	EARTHWORK	90,000.0 CY	1.55	139,500.00
10.	9010-1.08-A	CONVENTIONAL SEEDING, FERTILIZING AND MULCHING	12.2 AC	1200.00	14,640.00
11.	9040-1.08-R	EROSION CONTROL MAT	2,640.0 SQ	6.40	16,896.00
12.	9040-1.08-J	RIP RAP, IDOT CLASS D REVETMENT	189.0 TON	50.00	9,450.00
13.		DETENTION BASIN RISER AND OUTLET PIPE	1.0 LS	10,000.00	10,000.00
14.	9040-1.08-T	INLET PROTECTION DEVICE	3.0 EA	100.00	300.00
TOTAL BASE BID:					265,337.40

(The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.)

METHOD OF BIDDING

All bid items are based on unit prices. All unit prices must be submitted as dollars and cents. Examples of acceptable unit prices are 1000.00, 10.13, 100.56, 24.69. No partial cents may be included in unit prices. Examples of unacceptable unit prices are 1000.004, 10.125, 100.556, 24.687. The quantities of each item have been estimated from the construction plans. The unit price bid for each item of work shall be full compensation to the contractor for the complete installation of that particular item. Any item of work not listed on the proposal form, which is required to complete a bid item, shall be considered as incidental to that item. The TOTAL BASE BID will be the sum of the unit price extensions for all divisions. Unit price extensions shall be the estimated quantity for each item multiplied by the bid unit price. In the event of a discrepancy

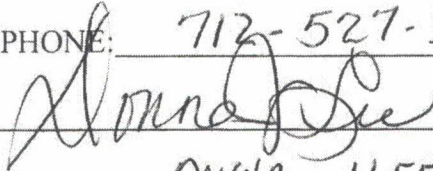
1 between the bid unit price and the unit price extension listed in the proposal, the bid unit price shall
2 govern. A unit price must now be submitted for all items appearing on the Proposal form,
3 including lump sum bid items. The basis of award shall be the lowest acceptable bid (sum of the
4 unit price extensions) form a qualified bidder for all divisions.
5

6 IN WITNESS WHEREOF THE Undersigned Bidder has caused (his, her, their) signature to be
7 affixed by a duly authorized (Officer, Partner, Owner), this 9TH day of AUGUST, 2021.
8
9

10 FIRM NAME: LEE CONSTRUCTION, INC

11 MAILING ADDRESS: 57258 225TH ST
12 GLENWOOD, IA 51534
13

14 TELEPHONE: 712-527-3455
15

16 BY: 
17
18 DONNA J LEE
19

20 (Printed name)
21

22 VP/ SEC
23
24 (Title)



AIA[®]

Document A312™ – 2010

Performance Bond

Bond Number: 2500029

CONTRACTOR:

(Name, legal status and address)
Lee Construction, Inc.

57258 225th St
Glenwood, IA 51534-6008

OWNER:

(Name, legal status and address)
Pottawattamie County Board of Supervisors

227 South 6th Street
Council Bluffs, IA 51501

CONSTRUCTION CONTRACT

Date:

Amount: \$ 265,337.40

Description:

(Name and location)
Pottawattamie County Roads Operation Center - Earthwork & Erosion Control Plans,
located between Eastern Hills Drive & the Council Bluffs Airport, North of McPherson
Avenue

BOND

Date: 08/26/2021

(Not earlier than Construction Contract Date)

Amount: \$ 265,337.40

Modifications to this Bond: None

See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Lee Construction, Inc.

Signature:

Name and Title: Michael Lee President

(Any additional signatures appear on the last page of this Performance Bond.)

SURETY

Company: (Corporate Seal)
West Bend Mutual Insurance Company

Signature:

Name and Title: WILLENE WHITE, Attorney-In-Fact

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

NOEL INSURANCE INC
219 WEST FOURTH STREET
OTTUMWA, IA 52501
(641) 682-7533

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)
HGM Associates, Inc.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the

Init.

Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

Int.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: NA

Name and Title:

Address:

Signature: NA

Name and Title:

Address:

Init.

AIA Document A312™ – 2010

Payment Bond

Bond Number: 2500029

CONTRACTOR:

(Name, legal status and address)

Lee Construction, Inc.

57258 225th St
Glenwood, IA 51534-6008

OWNER:

(Name, legal status and address)

Pottawattamie County Board of Supervisors
227 South 6th Street
Council Bluffs, IA 51501

CONSTRUCTION CONTRACT

Date:

Amount: \$ 265,337.40

Description:

(Name and location)

Pottawattamie County Roads Operation Center - Earthwork & Erosion Control Plans, located between Eastern Hills Drive & the Council Bluffs Airport, North of McPherson Avenue

SURETY:

(Name, legal status and principal place of business)

West Bend Mutual Insurance Company
PO Box 620976
Middleton, WI 53562

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

BOND

Date: 08/26/2021

(Not earlier than Construction Contract Date)

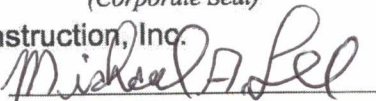
Amount: \$ 265,337.40

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Lee Construction, Inc.

Signature: 

Name and

Title: Michael Lee President

(Any additional signatures appear on the last page of this Payment Bond.)

SURETY

Company: (Corporate Seal)

West Bend Mutual Insurance Company

Signature: 

Name and

Title: WILLENE WHITE, Attorney-In-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

NOEL INSURANCE INC
219 WEST FOURTH STREET
OTTUMWA, IA 52501
(641) 682-7533

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

HGM Associates, Inc.

Init.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: NA

Name and Title:

Address:

Signature: NA

Name and Title:

Address:

Init.



POWER OF ATTORNEY

Know all men by these Presents, That West Bend Mutual Insurance Company, a corporation having its principal office in the City of West Bend, Wisconsin does make, constitute and appoint:

WILLENE WHITE

lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf as surety and as its act and deed any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of: Ten Million Dollars (\$10,000,000)

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of West Bend Mutual Insurance Company at a meeting duly called and held on the 21st day of December, 1999.

Appointment of Attorney-In-Fact. The president or any vice president, or any other officer of West Bend Mutual Insurance Company may appoint by written certificate Attorneys-In-Fact to act on behalf of the company in the execution of and attesting of bonds and undertakings and other written obligatory instruments of like nature. The signature of any officer authorized hereby and the corporate seal may be affixed by facsimile to any such power of attorney or to any certificate relating therefore and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the company in the future with respect to any bond or undertaking or other writing obligatory in nature to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any said officer at any time.

In witness whereof, the West Bend Mutual Insurance Company has caused these presents to be signed by its president undersigned and its corporate seal to be hereto duly attested by its secretary this 22nd day of September, 2017.

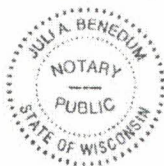
Attest Christopher C. Zwygart
Christopher C. Zwygart
Secretary



Kevin A. Steiner
Kevin A. Steiner
Chief Executive Officer/President

State of Wisconsin
County of Washington

On the 22nd day of September, 2017, before me personally came Kevin A. Steiner, to me known being by duly sworn, did depose and say that he resides in the County of Washington, State of Wisconsin; that he is the President of West Bend Mutual Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.



Juli A. Benedum
Juli A. Benedum
Senior Corporate Attorney
Notary Public, Washington Co., WI
My Commission is Permanent

The undersigned, duly elected to the office stated below, now the incumbent in West Bend Mutual Insurance Company, a Wisconsin corporation authorized to make this certificate, Do Hereby Certify that the foregoing attached Power of Attorney remains in full force effect and has not been revoked and that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at West Bend, Wisconsin this 26th day of August, 2021.



Heather A. Dunn
Heather Dunn
Vice President – Chief Financial Officer

Notice: Any questions concerning this Power of Attorney may be directed to the Bond Manager at NSI, a division of West Bend Mutual Insurance Company.



CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER NOEL Insurance Inc. 219 W. Fourth, P. O. Box 370 Ottumwa, IA 52501-0398 Willene J. White	CONTACT NAME: PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ PRODUCER CUSTOMER ID #: LEEMI-1														
INSURED Lee Construction, Inc. Michael Lee 57258 225th Street Glenwood, IA 51534	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : West Bend Mutual Insurance</td> <td style="text-align: center;">15350</td> </tr> <tr> <td>INSURER B : Liberty Mutual Group</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : West Bend Mutual Insurance	15350	INSURER B : Liberty Mutual Group		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : West Bend Mutual Insurance	15350														
INSURER B : Liberty Mutual Group															
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X		2353642	07/20/2021	07/20/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 200,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			2353642	07/20/2021	07/20/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (PER ACCIDENT) \$ _____
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ WAIVED			2353642	07/20/2021	07/20/2022	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	WC5-39S-743811-010	07/20/2021	07/20/2022	<input checked="" type="checkbox"/> WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
PROJECT: POTTAWATTAMIE COUNTY ROADS OPERATION CENTER- EARTHWORK AND EROSION CONTROL PLANS LOCATED BETWEEN EASTERN HILLS DRIVE AND THE COUNCIL BLUFFS AIRPORT, NORTH OF MCPHERSON AVENUE AND HGM ASSOCIATES INC ARE LISTED AS ADDITIONAL INSURED Workers Compensation is not covered under the umbrella

CERTIFICATE HOLDER <p style="text-align: center;">HGMAS-1</p> HGM Associates Inc 640 5th Avenue Council Bluffs, IA 51501	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <p style="text-align: center;"><i>Willene J. White</i></p>
---	--

Nick Jedlicka/Veteran Affairs Director

**Discussion and/or decision to approve
Veteran Affairs Administrative Assistant
Job Description.**

POTTAWATTAMIE COUNTY – VETERAN’S AFFAIRS

JOB DESCRIPTION

<u>POSITION TITLE:</u>	Administrative Assistant
<u>REPORTS TO:</u>	Veteran’s Affairs Director
<u>SUPERVISES:</u>	None
<u>BARGAINING UNIT/GRADE:</u>	Union; Pay Grade 12
<u>DATE:</u>	September 7,2021

PURPOSE OF POSITION: Responsible for providing clerical and administrative support services to departmental staff to ensure the efficient provision of services.

ESSENTIAL FUNCTIONS:

Greet visitors to the department, responds to inquiries and/or refers visitors to appropriate sources for assistance.

Answer the telephone for department staff, respond to inquiries, take messages and/or refer callers to appropriate personnel for assistance.

Perform various clerical duties such as typing, photocopying, and verifying accuracy of document.

Schedule appointments for staff as needed and coordinate veteran appointments and drivers for transportation to VA hospital.

Maintains the confidentiality of all information, communications, documents and correspondence in the Veteran’s Affairs office.

Perform computer data entry, processing and retrieval functions.

Prepare and maintain various departmental records, reports, correspondence and other departmental documents.

Maintain established file system by accurately filing required documents according to alphabetical or numerical order.

Operate standard office equipment including but not limited to the telephone system, typewriter, personal computer/word processor, photocopy machine, fax, scanner and calculators.

Receive, sort and distribute departmental mail.

Establishes and maintains effective working relationships with the clients, general public, governmental officials, supervisors and co-workers.

MARGINAL FUNCTIONS:

Performs other duties as directed or as the situation dictates.

ESSENTIAL KNOWLEDGE, EXPERIENCE AND ABILITY:

Regular and reliable attendance at work is an essential function of this position. Ability to report to work on time and in accordance with established work schedule.

Knowledge of or ability to learn routine office procedures, standard clerical techniques and office equipment.

Knowledge of or the ability to learn and operate standard office equipment and to utilize proper telephone etiquette when answering a multi-line phone system.

Knowledge of the English language and the ability to utilize proper grammar, spelling and punctuation.

Ability to maintain the confidentiality of all communications, documents and correspondence in the Veteran's Affairs office.

Ability to learn applicable sections of the Code of Iowa, County, State, and Federal regulations which impact departmental operations.

Skill in the use of computers. Must be proficient in the Microsoft Office suite, including word, excel, outlook including outlook and google calendar. Ability to learn county software programs and keep up to date with changing technology.

Ability to type accurately and attention to detail is required.

Ability to accurately perform basic mathematical calculations in the performance of job duties.

Ability to maintain files according to an established numerical or alphabetical system.

Ability to understand and follow detailed oral and written instructions.

Ability to establish and maintain effective working relationships with clients, the general public, governmental officials, supervisors and co-workers.

Ability to communicate effectively, both orally and in writing. Excellent customer service skills is essential.

Ability to maintain the confidentiality of all departmental communications, documents and transactions.

Ability to perform job duties efficiently while managing frequent interruptions.

ESSENTIAL EDUCATION, CERTIFICATION AND/OR LICENSES:

High school diploma or equivalent required.

SPECIAL NECESSARY REQUIREMENTS:

Must pass a county physical examination which includes a drug test and background check.

ESSENTIAL PHYSICAL DEMANDS AND TYPICAL WORKING CONDITIONS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Work is generally performed indoors and requires some physical activity, including extended periods of sitting or standing at reception desk; walking, kneeling, bending, crouching, reaching and stooping .

Have clarity of speech and hearing which permits effective communication.

Have sufficient vision which permits moderate production and review of a wide variety of materials both in electronic and hardcopy formats.

Have sufficient manual dexterity to make handwritten notations and which permits moderate use of a keyboard and mouse.

Ability to frequently lift and/or move office equipment and supplies weighing up to 10 pounds. Ability to occasionally lift and move equipment and supplies weighing up to 20 pounds.

Have sufficient personal mobility to complete work at various locations throughout the courthouse campus and county facilities.

Work hours may occasionally be required before or after normal business hours. .

An incumbent in this position must interact in a positive manner with clients regardless of their mental, financial, or physical circumstances. Work environment may be stressful when working with clients and when meeting deadlines.

Other Business

**Becky Lenihan/Finance & Tax Officer,
Auditor's Office**

**Discussion and/or decision on
amendment to FY 2021/22 budget, and
setting date for public hearing on said
amendment.**

September 21, 2021 @ 10:00AM

Closed Session

Received/Filed