

**RESOLUTION NO. 88-2025**

Introduced by Joel Hagy

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS TO KLEINFELDER GROUP INC. FOR THE PROVISION OF CONSTRUCTION OBSERVATION AND SPECIALTY TANK INSPECTION SERVICES RELATED TO THE 2 MILLION GALLON ELEVATED TANK PROJECT AT A COST NOT TO EXCEED EIGHTY-TWO THOUSAND FOUR HUNDRED NINETY AND 00/100 DOLLARS (\$82,490.00)**

**WHEREAS**, Council previously adopted Resolution No. 3-2024 authorizing an agreement with Kleinfelder Group Inc. for the provision of engineering design, bidding and construction administration services relating to the 2 MG Elevated Water Tank Project in an amount not to exceed One Hundred Thirty-Two Thousand Two Hundred Fifty and xx/100 Dollars (\$132,250.00) (hereinafter, the "Agreement") for expenses to be paid on a monthly basis, as set forth in Section 6.1 of the Agreement;

**WHEREAS**, Section 6.1 of the Agreement also set forth estimated amounts for expenses to be paid on a time and material basis, namely, construction observation services in the estimated amount of Twenty-Eight Thousand Six Hundred and xx/100 (\$28,600.00) and specialty tank inspection services in the estimated amount of Fifty Thousand and xx/100 Dollars (\$50,000.00); and

**WHEREAS**, the actual amounts of the time and material basis expenses have now been determined to be Twenty-Eight Thousand Six Hundred and xx/100 (\$28,600.00) for construction observation services and Fifty-Three Thousand Eight Hundred Ninety and xx/100 Dollars (\$53,890.00) for specialty tank inspection services; and

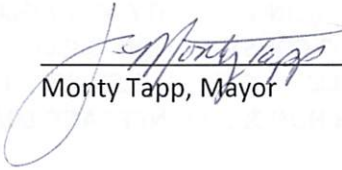
**WHEREAS**, this Resolution is necessary to authorize the actual amounts for the time and material basis expenses outlined in the Agreement in the total amount of Eighty-Two Thousand Four Hundred Ninety and xx/100 Dollars (\$82,490.00), which expenses Council has determined to be necessary and beneficial.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:**

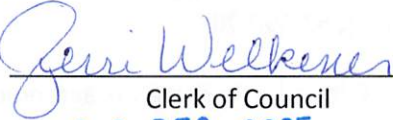
**SECTION 1.** That the City Manager is authorized and directed to authorize the expenditure of funds to Kleinfelder Group Inc. for the provision of construction observation and specialty tank inspection services at a cost not to exceed Eighty-Two Thousand Four Hundred Ninety and 00/100 Dollars (\$82,490.00) pursuant to the original Agreement attached as Exhibit A and invoice from Nelson Tank attached as Exhibit B, both of which are incorporated herein by reference.

**SECTION 2.** That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22.

**SECTION 3.** That this Resolution shall be in full force and effect from and immediately after its adoption.

  
Monty Tapp, Mayor

ATTEST:

  
Clerk of Council

09 DEC 2025

ADOPTED:



**RESOLUTION NO. 3-2024**

Introduced by Matt Grieves

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE PROPOSAL AND ENTER INTO AN AGREEMENT WITH KLEINFELDER GROUP INC. FOR THE PROVISION OF ENGINEERING DESIGN, BIDDING AND CONSTRUCTION ADMINISTRATION SERVICES RELATED TO THE 2-MILLION-GALLON ELEVATED WATER TOWER PROJECT AT A COST NOT TO EXCEED ONE HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$132,250.00)**

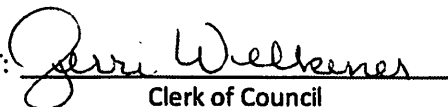
**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:**

**SECTION 1.** That the City Manager is authorized and directed to accept the proposal and enter into an agreement with Kleinfelder Group Inc. for the provision of engineering design, bidding and construction administration services relative to the 2-Million-Gallon Elevated Water Tower Project, at a cost not to exceed One Hundred Thirty-Two Thousand Two Hundred Fifty and 00/100 Dollars (\$132,250.00), which agreement shall be substantially in the form of Exhibit "A" attached hereto and made a part hereof.

**SECTION 2.** That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22.

**SECTION 3.** That this Resolution shall be in full force and effect from and immediately after its adoption.

ATTEST:

  
Clerk of Council

  
Monty Tapp, Mayor

ADOPTED:

09 JAN 2024



## CLIENT PROFESSIONAL SERVICES AGREEMENT

Huron 2.0 MG Elevated Tank  
Huron, Ohio  
M2400501.001P

This Agreement is made on: \_\_\_\_\_, 2024

Between City of Huron, Ohio with offices at 417 Main Street, Huron, Ohio 44839(Client)

And Kleinfelder, Inc. with offices at 1168 North Main Street, Bowling Green, Ohio 43402  
(Kleinfelder).

### Recitals

- A. Client wishes to appoint Kleinfelder to provide certain services (the **Services**, as defined below) required by Client or Client's agreement with the Owner on the terms and conditions contained in this Agreement.
- B. Kleinfelder has agreed to perform the Services on the terms and conditions contained in this Agreement.

Now it is agreed as follows:

### 1. CONTENTS OF AGREEMENT

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- 1.1 The parties agree that the documents listed in 1.1(a) through (c) constitute the "**Contract Documents**" of this Agreement. To establish obligations and resolve ambiguities among the Contract Documents, the following order of precedence will prevail:
  - (a) first, amendments and Change Orders issued in accordance with this Agreement;
  - (b) second, Kleinfelder's Proposal, dated August 28, 2023, which Client acknowledges receipt and confirms understanding of, and agreement with the contents thereof, in full (Appendix A);
  - (c) third, this Agreement.
- 1.2 To the extent of any inconsistency between this Agreement and any Prime Agreement, the provisions of this Agreement will always prevail.
- 1.3 Any pre-printed terms and conditions on forms used by either party in the administration of this Agreement are void and do not supplement or replace the terms and conditions of the Contract Documents of this Agreement.

### 2. APPOINTMENT AND SCOPE OF SERVICES

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- 2.1 Kleinfelder shall perform the services set forth in its Proposal attached hereto as Appendix A, and such additional services as Kleinfelder and Client jointly agree in writing (collectively, **Services**). The Proposal also shall specify Client's project for which the Services will be performed (**Project**), the location of Client's Project for providing the Services (**Site**), the time period for performance, the agreed fees, and additional provisions, if any, applicable to such Services. The Services, including any additions and modifications, shall be performed in accordance with this Agreement.
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### **3. STANDARD OF CARE**

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- 3.1 Kleinfelder will perform its Services in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the Services are provided.
- 3.2 Kleinfelder makes no other representation, guarantee or warranty, express or implied, regarding the Services, or any communication (oral or written), certification, report, opinion, or Instrument of Service provided pursuant to this Agreement.
- 3.3 Kleinfelder will not be responsible for the safety procedures employed by any party other than its own employees, subconsultants and subcontractors.
- 3.4 No level of assessment can conclusively determine whether a property or its structures are completely free of geotechnical hazards or hazardous substances (including but not limited to mold). Client represents that it has carefully reviewed the limitations described in the Proposal.
- 3.5 Even with diligent observation, some defects, deficiencies, or omissions may occur. Before exercising any other remedy for any alleged breach by Kleinfelder of this Agreement, Client will direct Kleinfelder in writing to re-perform any defective Services within twelve (12) months after contractor closeout.

### **4. KLEINFELDER'S RESPONSIBILITIES**

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- 4.1 Kleinfelder will perform the Services as an independent contractor and not as an agent or employee of Client. Nothing in this Agreement creates any special relationship or fiduciary duty.
- 4.2 Kleinfelder will, as reasonably directed by Client or its authorized agent:
  - (a) provide qualified staff to perform the Services;
  - (b) maintain records of Project activities and costs for no more than three years from its completion of the Services;
  - (c) coordinate to the extent reasonably possible with Client's employees, contractors, consultants so as not to impede the progress of the Project; and
  - (d) require its personnel to maintain a safe, clean and orderly work environment.

### **5. TERM AND TERMINATION**

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- 5.1 This Agreement will commence on the date of its execution, except as to any Services authorized by Client and performed by Kleinfelder beforehand. All Services shall be fully completed no later than November 2024, unless earlier terminated by either party or extended by the parties' mutual written agreement.
  - 5.2 Either party may terminate this Agreement at any time by providing ten (10) days' written notice to the other.
  - 5.3 Within fifteen (15) days from termination Client will pay Kleinfelder on demand for all Services rendered and costs incurred through to the date of any termination and for all agreed upon costs and expenses incurred by Kleinfelder in effecting the termination, including, without limitation, non-cancellable commitments, fixed cost components and other demobilization costs.
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## **6. COMPENSATION**

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**6.1 Kleinfelder will perform the Services in exchange for the following compensation:**

Client will pay a lump sum of \$132,250. Kleinfelder will invoice monthly on a percent complete basis for the following services:

• Survey Phase	\$3,600
• Preliminary Design and Site Selection	\$7,250
• Design Phase	\$85,700
• Procurement/Bidding Phase	\$9,250
• Construction Staking	\$1,600
• Construction Administration	\$19,850
• Funding Assistance	\$5,000

Client will pay on a time and material basis for Construction Observation services. Kleinfelder will invoice according to its fee schedule attached to the Proposal. Approximate costs of these services are estimated to be \$28,600 based on part-time observation, subject to contractor schedule and production rates. Specialty Tank Inspection services are estimated to be \$50,000 in addition to the part-time observation. Kleinfelder may invoice above this estimated fee for these services if the work period exceeds expected duration.

**Total Estimated Base Fee: \$210,850**

- 6.2** Client agrees to provide any special invoicing requirements to Kleinfelder in advance of signing this Agreement, to which additional charges may apply.
- 6.3** The hourly rates charged for Kleinfelder's Services are adjusted annually in January of each year to reflect changes in the various elements that comprise such hourly rates. All adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by Kleinfelder and consistent with Kleinfelder's overall compensation practices and procedures. Kleinfelder reserves the right to periodically adjust its fee schedule.
- 6.4** Kleinfelder will generally submit its invoices to Client on a monthly basis. Client must pay all invoices within thirty (30) days from the date of invoice, with interest at the rate of one and one-half percent (1 1/2 %) per month payable on all outstanding payments. Interest on all outstanding payments will be charged from the initial date of invoice.
- 6.5** Kleinfelder may suspend performance of Services under this Agreement until it has been paid in full for all outstanding payments, including interest charges.
- 6.6** Kleinfelder will be entitled to recover from Client on demand all expenses incurred (including all legal costs and expenses) in recovering any outstanding payments from Client.

## **7. INSURANCE**

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- 7.1** Kleinfelder will maintain during the term of this Agreement worker's compensation, commercial general liability, automobile liability and professional indemnity insurance coverage.
- 7.2** Client will maintain during the term of this Agreement adequate insurance coverage and will require and verify any contractors or parties it hires to have adequate insurance coverage. Client agrees that failure to comply with this clause will invalidate any indemnity provided by Kleinfelder under clause 12.1.
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## **8. CHANGES TO SCOPE OF SERVICES**

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- 8.1 Client or Kleinfelder may request to modify the scope of Services, whereon both parties agree to negotiate in good faith and execute a written Change Order. A Change Order is an amendment to this Agreement that modifies the Services and specifies the following:
- (a) a change in the terms and conditions of Services;
  - (b) an adjustment in the schedule for performance; and
  - (c) the amount of adjustment in Kleinfelder's compensation.
- 8.2 Kleinfelder will treat as a Change Order any written Client order (including directions, instructions, interpretations, or determinations) which request changes in the Services. Kleinfelder will give Client written notice within a reasonable time of any resulting adjustment in the schedule and compensation. Unless Client objects in writing within 5 business days, the proposed terms of the Change Order with the adjustment in the schedule and price shall become a part of this Agreement.
- 8.3 If Client and Kleinfelder cannot agree upon an equitable adjustment in the schedule and compensation, and Kleinfelder does not sign the Change Order, the disagreement shall be treated as a Dispute under clause 18.

## **9. FORCE MAJEURE**

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- 9.1 Kleinfelder will not be liable for delay or failure to perform its Services caused directly or indirectly by circumstances beyond its control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action or inaction, changed conditions, delays resulting from actions or inactions of Client or third parties, Site inaccessibility or inability of others to obtain material, labor, equipment, or transportation.
- 9.2 Should any of the preceding circumstances occur, then the date for completion or any other milestone date shall be adjusted for the delay in accordance with clause 8, provided Kleinfelder reports the delay to Client within a reasonable time of discovery.

## **10. INSTRUMENTS OF SERVICE**

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- 10.1 All data, reports, drawings, plans, or other documents (or copies) provided to Kleinfelder by Client for the purposes of this Agreement will, at Client's written request, be returned upon completion of the Services and payment in full for all Services rendered. Client agrees that Kleinfelder may retain one copy of all such documents.
- 10.2 Client agrees:
- (a) all reports, drawings, plans, documents, software, source code, object code, boring logs, field data, field notes, calculations, estimates, laboratory test data and other similar data, documents, and work products (or copies thereof) in any form prepared by Kleinfelder pursuant to this Agreement are instruments of service (Instruments of Service), not products;
  - (b) all opinions, certifications, communications (oral or written) or Instruments of Service furnished to Client are intended for the benefit of Client for the specific purposes stated herein and therein, are not intended to inform, guide, or otherwise influence any entities or persons other than Client in relation to the Project, and are not intended or represented to be suited for reuse by Client or others, and;
  - (c) reuse of Instruments of Service on projects or project extensions for which such was not intended will be at the user's sole risk and without Kleinfelder liability, and Client agrees to defend, indemnify, and hold harmless Kleinfelder and Kleinfelder's contractors, consultants, affiliates, directors, and employees from and against all losses, damages and liabilities (including all legal expenses) in connection with such reuse or misuse.
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- 10.3 Any requests by third parties for reliance upon any communication (oral or written), certification, report, opinion, or Instrument of Service provided by Kleinfelder pursuant to this Agreement will be subject to approval at Kleinfelder's sole discretion and to additional fees, terms, and conditions.

## **11. CLIENT'S RESPONSIBILITIES**

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- 11.1 Client agrees to provide and discuss with Kleinfelder on an ongoing basis all available material, data, and information pertaining to the Services, including, without limitation, (i) the composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any Site, (ii) any hazards that may be present, (iii) the nature and location of underground or otherwise not readily apparent utilities, (iv) summaries and assessments of the Site's past and present compliance status, (v) the status of any judicial or administrative action concerning the Site or Project, and (vi) Client records (in electronic format where possible) for such data as benchmarks, plans, maps, and property ownership; and
- 11.2 Client will ensure the cooperation of Client's employees, contractors, and consultants with Kleinfelder.
- 11.3 Client acknowledges and agrees that Kleinfelder is entitled to rely upon the accuracy and completeness of any information given by Client, its employees, contractors, and consultants.
- 11.4 Client will provide reasonable assistance to obtain data and records concerning the Site or Project in the possession, custody or control of third parties.

## **12. ALLOCATION OF RISK AND INDEMNITIES**

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- 12.1 Subject to the limitation of liability provisions of this Agreement, Kleinfelder indemnifies Client against all liabilities, losses or damages caused by the negligence or other fault of Kleinfelder and its employees, agents, representatives, subcontractors, and any other party for whom Kleinfelder is legally responsible (**Kleinfelder Parties**), but only to the extent such liabilities, losses or damages are caused by the negligence or other fault of the Kleinfelder Parties. If California law applies to this Agreement, the parties also expressly agree that this indemnity provision does not include, and in no event shall Kleinfelder be required to assume, any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Project or the Services rendered by Kleinfelder. This clause 12.1 is not intended to and will not in any way be limited by any insurance coverage available to Client under any Kleinfelder insurance policy.
- 12.2 Client indemnifies Kleinfelder against all liabilities, losses or damages caused by the negligence or other fault of Client and its employees, agents, representatives, subcontractors, and all other parties for whom Client is legally responsible (**Client Parties**), but only to the extent such liabilities, losses or damages are caused by the negligence or other fault of Client Parties when compared to the negligence or other fault of all other applicable persons and entities. If California law applies to this Agreement, the parties also expressly agree that this indemnity provision does not include, and in no event shall Client be required to assume, any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Project or services rendered by Client. This clause 12.2 is not intended to and will not in any way be limited by any insurance coverage available to Kleinfelder under any Client, Owner, or Project insurance policy.
- 12.3 Subject to any applicable statutory limitations, the indemnity obligations in this clause 12 shall survive the expiration or termination of this Agreement.

## **13. LIMITATION OF LIABILITY**

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- 13.1 The maximum aggregate liability of Kleinfelder arising out of or related to this Agreement, as amended, and including all Change Orders, whether based in contract or tort or otherwise in law or equity, will be limited to the sum total of \$1,000,000.
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- 13.2 As used in this clause 13, "Kleinfelder" includes Kleinfelder, its affiliates, subconsultants and subcontractors, and their respective partners, officers, directors, shareholders, and employees. The limitation of liability established in this clause 13 shall survive the expiration or termination of this Agreement.

#### **14. WAIVER OF CONSEQUENTIAL DAMAGES**

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- 14.1 Neither party will be liable to the other party for any special, incidental, indirect, exemplary, punitive, penal, or consequential damages however arising incurred by either Kleinfelder or Client or for which either may be liable to a third party.

#### **15. NO CONTROL OF MEANS AND METHODS OF OTHERS**

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- 15.1 Client agrees:

- (a) Kleinfelder's performance of the Services does not include any job site safety obligations which may be required by or in connection with the Project or the Services or any applicable code or regulation, other than strictly in respect of its own employees; and
- (b) Kleinfelder will not have control over or charge of the acts or omissions of any contractor or contractors' agents, employees, or subcontractors

#### **16. SITE ACCESS**

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- 16.1 Client agrees to:

- (a) provide unimpeded and timely access to the Site, including any third party sites, if required;
- (b) provide an adequate area for Kleinfelder's Site office facilities, equipment storage, and parking;
- (c) furnish all construction utilities and utility releases necessary for the performance of the Services; and
- (d) obtain all permits, licenses or authorizations necessary for the performance of the Services.

#### **17. WARRANTY OF TITLE, WASTE OWNERSHIP**

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- 17.1 Kleinfelder will not take title to or be liable for any hazardous materials found at any Project Site. Any risk of loss with respect to all materials remains with Client or the Site owner, who will be considered the generator of such materials, execute all manifests as the generator of such materials, and be liable for the arrangement, transportation, treatment, and/or disposal of all material. All samples remain the property of Client. Client agrees to promptly, at its cost, remove and lawfully dispose of samples, cuttings, and hazardous materials.

#### **18. DISPUTE RESOLUTION**

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- 18.1 If a dispute arises out of or relates this Agreement (Dispute), the parties agree to submit the Dispute to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (AAA). The mediator will be an independent person agreed between the parties from a panel suggested by the Institute or, failing agreement, a mediator appointed by AAA. A party shall not call for mediation of any Dispute after such period of time as would bar the initiation of legal proceedings to litigate such Dispute under the laws of the state in which the Project is located.
- 18.2 Client and Kleinfelder agree that in the event of a Dispute, they will not seek recourse against individual officers, employees, directors, or shareholders of the other party.
- 18.3 A party shall not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause unless the party seeks injunctive or other interlocutory relief.
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18.4 If the Dispute cannot be resolved through mediation, either party may file suit in an appropriate court in the state where the Services are performed.

18.5 This clause survives termination or expiry of this Agreement.

## **19. MISCELLANEOUS**

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19.1 This Agreement is governed and construed in accordance with the laws of the state where the Services are performed. The parties hereby submit to the jurisdiction of the courts of the state where the Services are performed and waive any right to object to any proceedings being brought in those courts.

19.2 Waiver of any term, condition or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach. A waiver is not valid or binding unless made in writing.

19.3 If any provision of this Agreement is found by a duly constituted authority to be invalid, void, or unenforceable, all remaining provisions shall continue in force.

19.4 This Agreement does not create, nor will it be construed to create, any benefit or right in any third party or any special relationship or fiduciary duty to third parties.

19.5 Client and Kleinfelder shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

19.6 This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter. It supersedes all earlier conduct, prior agreements, and understandings between the parties in connection with its subject matter.

19.7 Each party must do anything necessary to give full effect to this Agreement.

19.8 All notices, requests or instructions hereunder must be in writing and either hand delivered to the recipient, delivered by registered mail or express mail to the addresses given in this Agreement.

19.9 This Agreement cannot be assigned by either party without the prior written approval of the other party. Kleinfelder may subcontract performance of portions of the Services to a qualified subcontractor.

19.10 Any amendment or revision to this Agreement must be in writing and signed by both parties. Any oral modification or revision of this Agreement shall not operate to modify this Agreement.

19.11 This Agreement may be executed in counterparts, including photo or electronic copies, which taken together shall constitute one original document.

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IN WITNESS WHEREOF, Client and Kleinfelder have caused this Agreement to be executed on the date first written above.

CLIENT: City of Huron

KLEINFELDER:

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

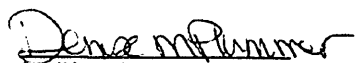
Printed Name: Matthew Lasko

Title: City Manager

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

Printed Name: Thomas Borck P.E.

Title: Project Management Leader

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

Printed Name: Denise Plummer, P.E.

Title: Senior Project Manager

ATTACHMENTS: Appendix A, Kleinfelder Proposal

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August 28, 2023

**Appendix A**

Mr. Jack Evans  
Water Superintendent  
City of Huron, Ohio  
417 Main Street  
Huron, Ohio 44839

Re: City of Huron 2.0 MG Elevated Tank  
M2400501.001P

Dear Mr. Evans,

As we discussed recently, Kleinfelder, Inc. proposes to provide professional engineering services to assist the City (Owner) with the design of the 2.0 MG Elevated tank(hereinafter referred to as the "project"), at a location to be determined in the City of Huron, Ohio.

The City shall be responsible for providing a detailed summary of the requirements for the project, including any special considerations or services needed. In addition, the City will provide all pertinent existing data related to this project to Kleinfelder.

**Scope of Services:**

- **Topographic Survey**
  - Topographic Survey of tank project area including connecting waterline
  - Research and development of existing R/W within the project area.
  - Establishment of control points
  - Establishment of project benchmarks
- **Preliminary Design and Site Selection**
  - Meet with City officials to review and discuss the scope of services, schedule, and potential sites for the tank.
  - Verify suitability of proposed sites for distribution system operation.
  - Discuss tank design options and preferences for layout selection.
  - Develop project schedule and budget
- **Design**
  - Assist the City in obtaining quotes for geotechnical services and stake boring locations.
  - Prepare detailed design plans and develop specifications.
  - Update project schedule.

- Develop a detailed construction cost estimate.
- Review the final plans, specifications, and construction cost estimate with the City. Include alternative tank styles to be bid as alternate bid items if desired by the Owner.
- Prepare appropriate Ohio EPA plan approval forms.
- After approval by the City, submit plans, specifications, and permit to Ohio EPA for review and approval.
- Make any revisions requested by the City and required by OEPA.
- **Bidding & Negotiations**
  - Prepare final drawings and technical specifications for the project and front-end contract documents for bidding.
  - Submit complete bid package to City for review.
  - Submit bid advertisement to local paper and online plan room.
  - Answer contractor questions during bidding, respond to RFI's, issue addenda as required, and update contract documents accordingly. Prepare any necessary Addenda for the project.
- **Construction Staking**
  - Stake proposed tank location and waterline.
- **Construction Administration**
  - Attend pre-construction meeting, prepare agenda and meeting minutes.
  - Review and process shop drawings.
  - Respond to Contractor RFI's.
  - Review, approve and process payment applications.
  - Review and recommend changes to the scope of work.
  - Conduct site visits to ensure project is progressing in conformance with the contract documents.
  - Interface with funding agencies as required.
  - Prepare and coordinate contract close-out documents.
- **Observation**
  - Provide part-time, onsite observation during construction. Critical phase observation is included in this scope.
  - Hold final inspection and prepare, in conjunction with City Staff, a punch list of unfinished items.
  - Provide punchlist to contractor for completion in a timely manner.
  - Provide copies of all construction observation reports to the City.
  - Prepare record drawings of as constructed conditions for the Owner from the Contractor's as-built drawings.
  - Notify Engineer and Owner of any unforeseen conditions, changes and construction related issues which arise.

**Assumptions and Excluded Services:**

- Preparation of any temporary and/or permanent utility easements.
- Includes advertisement and bidding as one project.

Kleinfelder will complete these design services within fifteen (15) months following execution of this agreement.

If you believe that revisions and/or additional discussions/clarifications are necessary concerning the scope of this project and the services that our firm will provide, please contact our office as soon as possible. If work activities are required which are not included in the basic services described above, Kleinfelder can provide these based on its current hourly rate schedule.

If the City has a budgetary limit for this project, please provide this in writing, so that the project can be designed within those limitations.

If there are any questions or you need additional information, please do not hesitate to contact this office.

Sincerely,

KLEINFELDER, INC.

A handwritten signature in black ink, appearing to read "Thomas Borck". The signature is fluid and cursive, with the first name "Thomas" and last name "Borck" clearly distinguishable.

Thomas Borck, P. E.  
Project Manager Leader



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
12/21/2023

Holder Identifier : ACDG

Certificate No : 570103148085



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 have ADDITIONAL INSURED provisions or 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 Aon Risk Insurance Services West, Inc. Los Angeles CA Office 707 Wilshire Boulevard Suite 2600 Los Angeles CA 90017-0460 USA	CONTACT NAME: PHONE (AC, No. Ext): (866) 283-7122 FAX (AC, No.): (800) 363-0105 E-MAIL ADDRESS:
INSURED The Kleinfelder Group, Inc 770 First Ave., Suite 400 San Diego CA 92101 USA	INSURER(S) AFFORDING COVERAGE INSURER A: Zurich American Ins Co NAIC # 16535 INSURER B: Lloyd's Syndicate No. 1967 AA1120103 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: 570103148085 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.

USER		LIMITS		LIMITS	
TYPE	INSURANCE	ADDITIONAL	INSURED	POLICY NUMBER	POLICY PERIOD (MM/DD/YYYY)
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER POLICY X PRO-JECT LOC OTHER	Y	Y	GL0612459402	04/01/2023 04/01/2024
				LIMITS	
				EACH OCCURRENCE	\$1,000,000
				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
				MED EXP (Any one person)	\$15,000
				PERSONAL & ADV INJURY	\$1,000,000
				GENERAL AGGREGATE	\$2,000,000
				PRODUCTS - COMPROP AGG	\$2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRE AUTOS ONLY NON-OWNED AUTOS ONLY	Y	Y	BAP 6124595-02	04/01/2023 04/01/2024
				LIMITS	
				COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
				BODILY INJURY (Per person)	
				BODILY INJURY (Per accident)	
				PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB EXCESS LIAB DED RETENTION				
				LIMITS	
				EACH OCCURRENCE	
				AGGREGATE	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC612459602 All States	04/01/2023 04/01/2024
				LIMITS	
				X PER STATUTE	OTM-ER
				E.L. EACH ACCIDENT	\$1,000,000
				E.L. DISEASE-EA EMPLOYEE	\$1,000,000
				E.L. DISEASE-POLICY LIMIT	\$1,000,000
B	Environmental Contractor Poll/Prof [E&O]			PSDEF2300647 Claims-Made Policy SIR applies per policy terms & conditions	04/01/2023 04/01/2024
				LIMITS	
				Each Claim	\$2,000,000
				Aggregate	\$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: New Raw Water Intake and Pump Station with forcemain for Huron WTP and new elevated 2,000,000 gallon water storage tank. Project ongoing date: 1/2/2024. City of Huron is included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies. A waiver of Subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the General Liability, Automobile Liability and Workers' Compensation policies. Should General Liability, Automobile Liability, Professional Liability and Workers' Compensation policies be cancelled before the expiration date thereof, the policy provisions of each policy will govern how notice of cancellation may be delivered to certificate holders in accordance with the policy provisions of each policy. See Attached for Complete List of Named Insureds.

## CERTIFICATE HOLDER

## CANCELLATION

City of Huron Attn: Jack Evans 417 Main Street Huron OH 44839 USA	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 <i>Aon Risk Insurance Services West Inc</i>
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AGENCY CUSTOMER ID: 570000071365

LOG #:



# **ADDITIONAL REMARKS SCHEDULE**

Page \_ of \_

AGENCY Aon Risk Insurance Services West, Inc.		NAMED INSURED The Kleinfelder Group, Inc	
POLICY NUMBER See Certificate Numbe 570103149085			
CARRIER See Certificate Numbe 570103149085	NAIC CODE	EFFECTIVE DATE:	

## **ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

### **NAMED INSURED SCHEDULE**

Kleinfelder, Inc.  
 The Kleinfelder Group, Inc.  
 Kleinfelder Holdings, LLC  
 Kleinfelder Parent, Inc  
 Kleinfelder Architecture Northeast, Inc.  
 Kleinfelder Australia Pty Ltd  
 Kleinfelder Canada, Inc.  
 Kleinfelder Colorado 100, LLC  
 Kleinfelder Construction Services, Inc  
 Kleinfelder Engineering and Geology, P.C.  
 Kleinfelder Guam 101, LLC  
 Kleinfelder International, Inc  
 Kleinfelder Kansas 100, LLC  
 Kleinfelder New Mexico 100, LLC  
 Kleinfelder Northeast, Inc.  
 Kleinfelder Oklahoma 100, LLC  
 Kleinfelder PNG Ltd.  
 Kleinfelder Southeast, Inc.  
 Kleinfelder Texas 100, LLC  
 Kleinfelder Texas 200, LLC  
 Kleinfelder Utah 100, LLC  
 A-1, Inc.- Kleinfelder East, Inc.  
 Buys & Associates, Inc. - TKG  
 Corrigan Consulting, Inc.- TKG  
 Insite Environmental, Inc.- Kleinfelder West, Inc.  
 Kowalski Engineering, Inc.- Kleinfelder Central, Inc.  
 MCE Group, Inc.- Kleinfelder, Inc.  
 Omni Environmental, LLC- Kleinfelder East, Inc.  
 Spectrum Exploration, Inc.-TKG  
 The Wallace Group, Inc. - Kleinfelder West, Inc.  
 TKG Acquisition Corp.  
 Trigon Environmental Services, Inc.  
 Simon Wong Engineering, Inc.  
 Advantage Engineering, LLC - Kleinfelder, Inc.  
 Garcia & Associates - Kleinfelder, Inc.  
 Poggemeyer Design Group, Inc.  
 Design Engineers & Consulting Associates, Inc. (DECA)  
 Industrial Fluid Management, Inc.  
 CM Works, Inc.  
 Gas Transmission Systems, Inc.  
 GTS Engineering & Consulting, LLP  
 Century Engineering, LLC





**ZURICH**

## **Additional Insured – Automatic – Owners, Lessees Or Contractors**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy No. GLO 6124594-02

Effective Date: 04/01/2023

This endorsement modifies insurance provided under the:

### **Commercial General Liability Coverage Part**

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a. The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or
- b. The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

- (1) Your ongoing operations, with respect to Paragraph 1.a. above; or
- (2) "Your work", with respect to Paragraph 1.b. above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 1., insurance afforded to such additional insured:

- (a) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (b) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a. The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or
- b. The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

in the performance of:

- (a) Your ongoing operations, with respect to Paragraph 2.a. above; or
- (b) "Your work" and included in the "products-completed operations hazard", with respect to Paragraph 2.b. above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 2., insurance afforded to such additional insured:

- (i) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (ii) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

3. If neither Paragraph 1. nor Paragraph 2. above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a. Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b. With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 3., insurance afforded to such additional insured:

- (a) Only applies to the extent permitted by law;
- (b) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and
- (c) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.

4. If neither Paragraph 1. nor Paragraph 2. above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a. Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b. With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 4., insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;
- (3) Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

- (4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

**B. Solely with respect to the insurance afforded to any additional insured referenced in Section A. of this endorsement, the following additional exclusion applies:**

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

**C. Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions:**

The additional insured must see to it that:

- (1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
- (2) We receive written notice of a claim or "suit" as soon as practicable; and
- (3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

**D. Solely with respect to the coverage provided by this endorsement:**

1. The following is added to the **Other Insurance Condition** of Section IV – Commercial General Liability Conditions:

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the **Other Insurance Condition** under Section IV – Commercial General Liability Conditions:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

**E. This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.**

F. Solely with respect to the insurance afforded to an additional insured under Paragraph A.3. or Paragraph A.4. of this endorsement, the following is added to Section III – Limits Of Insurance:

**Additional Insured – Automatic – Owners, Lessees Or Contractors Limit**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Section A. of this endorsement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms, conditions, provisions and exclusions of this policy remain the same.



**ZURICH**

## Waiver Of Subrogation (Blanket) Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l. Prem	Return Prem.
GLO6124594-02	04/01/2023	04/01/2024	04/01/2023		\$	\$

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

The following is added to the Transfer Of Rights Of Recovery Against Others To Us Condition:

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

**ZURICH**

## Coverage Extension Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
BAP6124595-02	04/01/2023	04/01/2024	04/01/2023			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form  
Motor Carrier Coverage Form**

### **A. Amended Who Is An Insured**

1. The following is added to the **Who Is An Insured Provision in Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- Anyone else who furnishes an "auto" referenced in Paragraphs A.1.a. and A.1.b. in this endorsement.
- Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance Condition in the Business Auto Coverage Form and the Other Insurance – Primary and Excess Insurance Provisions Condition in the Motor Carrier Coverage Form**:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

### **B. Amendment – Supplementary Payments**

Paragraphs a.(2) and a.(4) of the **Coverage Extensions Provision in Section II – Covered Autos Liability Coverage** are replaced by the following:

- Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**C. Fellow Employee Coverage**

The **Fellow Employee Exclusion** contained in **Section II – Covered Autos Liability Coverage** does not apply.

**D. Driver Safety Program Liability and Physical Damage Coverage**

1. The following is added to the **Racing Exclusion** in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in the **Exclusions of Section III – Physical Damage Coverage of the Business Auto Coverage Form** and Paragraph 2.b. in the **Exclusions of Section IV – Physical Damage Coverage of the Motor Carrier Coverage Form**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

**E. Lease or Loan Gap Coverage**

The following is added to the **Coverage Provision of the Physical Damage Coverage Section**:

**Lease Or Loan Gap Coverage**

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage Section** of the Coverage Form; and
- b. Any:
  - (1) Overdue lease or loan payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (3) Security deposits not returned by the lessor;
  - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
  - (5) Carry-over balances from previous leases or loans.

**F. Towing and Labor**

Paragraph **A.2.** of the **Physical Damage Coverage Section** is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

**G. Extended Glass Coverage**

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage Section**:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

**H. Hired Auto Physical Damage – Increased Loss of Use Expenses**

The **Coverage Extension for Loss Of Use Expenses** in the **Physical Damage Coverage Section** is replaced by the following:

**Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

#### **I. Personal Effects Coverage**

The following is added to the Coverage Provision of the Physical Damage Coverage Section:

##### **Personal Effects Coverage**

- a. We will pay up to \$750 for "loss" to personal effects which are:
  - (1) Personal property owned by an "insured"; and
  - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
  - (1) The reasonable cost to replace; or
  - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
  - (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
  - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
  - (3) Paintings, statuary and other works of art.
  - (4) Contraband or property in the course of illegal transportation or trade.
  - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

#### **J. Tapes, Records and Discs Coverage**

- 1. The Exclusion in Paragraph B.4.a. of Section III – Physical Damage Coverage in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of Section IV – Physical Damage Coverage in the Motor Carrier Coverage Form does not apply.
- 2. The following is added to Paragraph 1.a. Comprehensive Coverage under the Coverage Provision of the Physical Damage Coverage Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The Physical Damage Coverage Deductible Provision does not apply to such "loss".



**K. Airbag Coverage**

The Exclusion in Paragraph B.3.a. of Section III – Physical Damage Coverage in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of Section IV – Physical Damage Coverage in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

**L. Two or More Deductibles**

The following is added to the Deductible Provision of the Physical Damage Coverage Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

**M. Physical Damage – Comprehensive Coverage – Deductible**

The following is added to the Deductible Provision of the Physical Damage Coverage Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is \$5,000 or the deductible shown in the Declarations, whichever is greater.

**N. Temporary Substitute Autos – Physical Damage**

1. The following is added to Section I – Covered Autos:

**Temporary Substitute Autos – Physical Damage**

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. "Loss"; or
5. Destruction.

2. The following is added to the Paragraph A. Coverage Provision of the Physical Damage Coverage Section:

**Temporary Substitute Autos – Physical Damage**

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

**O. Amended Duties In The Event Of Accident, Claim, Suit Or Loss**

Paragraph a. of the Duties In The Event Of Accident, Claim, Suit Or Loss Condition is replaced by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any

agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

**P. Waiver of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

**Q. Employee Hired Autos – Physical Damage**

Paragraph b. of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph f. of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For **Hired Auto Physical Damage** Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**R. Unintentional Failure to Disclose Hazards**

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

**S. Hired Auto – World Wide Coverage**

Paragraph 7a.(5) of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

**T. Bodily Injury Redefined**

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

#### **U. Expected Or Intended Injury**

The Expected Or Intended Injury Exclusion in Paragraph B. Exclusions under Section II – Covered Auto Liability Coverage is replaced by the following:

##### **Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

#### **V. Physical Damage – Additional Temporary Transportation Expense Coverage**

Paragraph A.4.a. of Section III – Physical Damage Coverage is replaced by the following:

##### **4. Coverage Extensions**

###### **a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

#### **W. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto**

The following is added to Paragraph A. Coverage of the Physical Damage Coverage Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

#### **X. Return of Stolen Automobile**

The following is added to the Coverage Extension Provision of the Physical Damage Coverage Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.

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**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**Schedule**

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION.



## PROPOSAL AND CONTRACT AGREEMENT

This agreement between KLEINFELDER (PROJECT ENGINEER) and NELSON TANK ENGINEERING and CONSULTING, INC. (CONSULTANT) for consulting services on the 2,000,000-Gallon Elevated Water Storage Tank (PROJECT) at HURON, OH (OWNER) is as follows:

The PROJECT ENGINEER agrees to engage the services of the CONSULTANT for services hereinafter set forth.

- A. CONSULTANT agrees to perform services as detailed in the attached Section I.
- B. PROJECT ENGINEER agrees to pay CONSULTANT for services rendered the not to exceed sum of Fifty-Three Thousand Eight Hundred Ninety Dollars (\$53,890). Terms of Payment shall be detailed in Section II.
- C. Additional services performed by CONSULTANT requested by the PROJECT ENGINEER that are not within the proposed scope of services as defined in Section I, shall be paid to the CONSULTANT in accordance with time and material fees per Section III plus reimbursable expenses.
- D. The PROJECT ENGINEER and CONSULTANT agree to the conditions as set forth in the attached General Provisions of the agreement.

This contract format shall include this cover sheet, Sections I, II, III and General Conditions. Any changes in this CONTRACT shall be made by written addendum.

Debra Otberg  
Proposed by CONSULTANT

August 29, 2023  
Date

Keith A Nelson  
Contract Approved by CONSULTANT

1/19/2024  
Date

Dennis M. Plummer  
Contract Approved by PROJECT ENGINEER

1-19-2024  
Date

# **SECTION I**

## **2,000,000-Gallon Water Storage Tank Critical Phase Inspection Services**

### **I. Scope of Services Performed by Consultant**

#### **A. Consulting**

1. Review plans and specifications for AWWA D100 Standard compatibility. Assist in review of shop drawings for steel erection section and painting instructions.

#### **B. Attend preconstruction meeting.**

#### **C. Construction and Welding**

1. One visit to review materials delivered to site. Review welder certifications and qualifications of erection crew. Observe construction and welding practices for specification compliance. Completed welds visually inspected for surface defects (i.e. undercut, reinforcement, underfill).
2. Eight visits to observe construction and welding practices for specification compliance. Completed welds visually inspected for surface defects (i.e. undercut, reinforcement, underfill). Locate radiographs per prepared schedule and observe radiograph team in relation to AWWA D100 code.
3. One visit for final inspection of the fully erected tank. Completed welds visually inspected for surface defects (i.e. undercut, reinforcement, underfill). Punch list will be created (if necessary) for Steel Construction Contractor.

#### **D. Painting**

1. Fourteen visits to set standard for interior abrasive cleaning as set forth in the contract specifications. Record and review the materials delivered to the site for specification compliance. Review interior abrasive blast cleaning for thoroughness, surface profile, and compliance with specifications, prior to application of the primer coat.
2. One visit to inspect the interior primer coat for uniformity, coverage, and dry film thickness, prior to application of the intermediate coat.
3. One visit to inspect the interior intermediate coat uniformity, coverage, dry film thickness, prior to application of the topcoat.

4. Two visits to inspect the interior topcoat for uniformity, dry film thickness, and holiday detection. Examine the overall project for possible damage caused by equipment removal.
5. Fourteen visits to set the standard for exterior surface preparation for compliance with specifications. Record and review all materials delivered to the site for specification compliance. Review exterior surface preparation for compliance with specifications, prior to application of the primer coat.
6. One visit to inspect the exterior primer coat for uniformity, coverage, and dry film thickness, prior to application of the intermediate coat.
7. One visit to inspect the exterior intermediate coat for uniformity, coverage, and dry film thickness prior to application of the topcoat.
8. One visit to inspect the exterior topcoat for uniformity, coverage and dry film thickness for compliance with specifications. Examine the overall project for possible damage caused by equipment removal.
9. One visit to finalize the project to assure all items in the contract specifications have been completed, and that the quality of workmanship meets the contract requirements.

**D. Shop Painting (Optional)**

1. Inspect the surface preparation and priming of the steel plates at the shop painting facility.

**II. Miscellaneous Provisions**

- A. All documents produced by the Consultant under this agreement shall remain the property of the Consultant and may not be used by the Owner for any other endeavor without the written consent of the Consultant.
- B. Inspection reports shall detail work completed, report progress, provide test results and prepare punch list for incomplete work.
- C. Consultant shall provide review and recommendations for pay requests submitted by Contractor.
- D. Consultant shall provide only inspection visits as described above unless otherwise directed by Owner. Consultant shall endeavor to observe Contractor's corrections of deficiencies or punch list items concurrently with regularly scheduled inspection visits. Additional visits, beyond the final inspection, required observing Contractor's corrections of deficiencies or punch list items shall be assessed per Section II. Payment to the Contractor shall be reduced to cover the cost of additional inspection services when deemed appropriate.

## **SECTION II**

### **Proposed Service Fees**

#### **2,000,000-Gallon Water Storage Tank Critical Phase Inspection Services**

1. Payment for specification and shop drawing review shall be based on the not to be exceed amount of \$900 at \$150/hr.
2. Payment for meeting attendance shall be the lump sum amount of \$650.
3. Payment for Inspection Services – Construction, Welding and Field Painting shall be \$36,340. Inspection fees shall be lump sum for each individual site visit. Payment shall be a \$790 per visit fee with 46 visits detailed in Section I.
4. Payment for Inspection Services-Shop Painting (Optional) shall be based on the not to exceed amount of \$16,000 at \$930 per day, and travel:

Inspection	\$790 per day
Per Diem	<u>\$140 per day</u>
	\$930 per day

Travel, car rental, air fare, \$1,000 - \$1,700 per round trip.

5. Professional services requested by Project Engineer that are not included in the original scope of work, Section I, shall be paid to the Consultant based on time and material fees per Section III.
6. Invoices shall include all work performed during the month. The invoice will start on the beginning of each month and will close on the end of each month. Any account remaining unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, the Project Engineer shall pay all costs of collection, including reasonable attorney fees.



## Section III

### Additional Service Fees

<u>Labor Class</u>	<u>PER HOUR</u>
--------------------	-----------------

Project Manager.....	\$150.00
Registered Professional Engineer.....	\$150.00
Project Engineer - Level II.....	\$110.00
Project Engineer - Level I.....	\$ 95.00
Inspector - Level II.....	\$ 90.00
Inspector - Level I.....	\$ 80.00
Secretarial Services.....	\$ 60.00
Modeling or CAD.....	\$140.00

#### Expenses

Mileage Commercial.....	\$1.00/mile
Mileage Truck.....	\$2.00/mile
Meals, Lodging.....	\$140 per diem
Air Travel.....	Business class
Car rental.....	Full size

#### Laboratory Testing

TCLP (One metal).....	\$ 85.00
TCLP (Ten metals).....	\$350.00
Background Soil (Total lead).....	\$ 45.00
Paint Sample (1 Metal).....	\$ 50.00
Paint Sample (2 Metal).....	\$ 60.00
Paint Sample (3 Metal).....	\$ 70.00
Lead Detection.....	\$ 40.00

# **NELSON TANK ENGINEERING AND CONSULTING, INC. AGREEMENT**

## **General Conditions** (Engineer Document)

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### **I. BASIC PROVISIONS**

- A) The parties agree to deliver all executed documents upon signing of the Services Agreement.
- B) The Project Engineer agrees to furnish Consultant with sufficient copies of all documentation necessary to contract for the work to be completed according to the Services Agreement.
- C) All times provided for in the Services Agreement shall commence upon the dates specified therein. Consultant shall commence work upon execution of the Services Agreement.
- D) Consultant shall verify all physical data, measurements and other information prior to the commencement of work and report any ambiguities, errors, conflicts or discrepancies to Project Engineer. Consultant shall not be liable to the Project Engineer for failure to report any such ambiguities, discrepancies, errors or conflicts unless Consultant knew or should have reasonably known of the same.
- E) Within a reasonable time of the execution of the Services Agreement, Consultant agrees to provide Project Engineer with a preliminary schedule of work to be done with a timetable and schedule of estimated costs to be incurred and a schedule of Certificates of Insurance or any other evidence of insurance as may be required. At this time, a preliminary conference with Project Engineer shall be held if either party has unclarified questions or ambiguities with regard to the discharge of the Services Agreement.
- F) The parties intend that the Services Agreement along with all collateral documents thereto including this Schedule of General Provisions shall constitute all of the contract documents between the parties for the services to be rendered. It is the intention of the parties to adopt all business practices, trade customs and technical definitions as used in the construction industry in the interpretation of the Agreement. All ambiguities raised by either party to the Agreement shall be subject to interpretation in writing agreed to by the parties or as settled by mediation as provided herein.
- G) The Agreement and all collateral documents may be amended, supplemented, revised or deleted only by written document entered into by the parties which will include change orders as provided herein.

### **II. MATTERS PERTAINING TO THE AVAILABILITY OF OWNER'S FACILITIES**

- A) The Owner shall furnish Consultant with unencumbered access to the facility as described in the Services Agreement along with all documentation deemed reasonably necessary by the Consultant as a condition precedent for the performance of Consultant's services.
- B) The Consultant may rely upon the technical information and physical data provided by the Project Engineer with regard to the specifications, characteristics, dimensions and condition of the structure and other assets upon which the Consultant has been retained to work.
- C) Consultant may rely upon the technical information provided by the Project Engineer in performing its services and shall not be responsible for errors based upon incomplete or erroneous data supplied by the Project Engineer. If Consultant discovers any defects in the performance of services contracted for by the Services Agreement, Project Engineer agrees to issue any necessary change orders providing for such additional work as necessary to correct the defect in question and to authorize payment for any and all additional services or material required by the Consultant to complete Consultant's services.
- D) Defects undiscovered by Consultant when estimating the work to be done under the Services Agreement, shall be called to the Project Engineer's notice immediately upon discovery.

### **III. INSURANCE**

- A) Consultant shall purchase and maintain such liability and other insurance as is appropriate for the services being rendered and furnished and will provide protection from claims which may arise out of Consultant's performance and furnishing of services and Consultant's other obligations under the Services Agreement whether to be performed by Consultant, subcontractor, or supplier or by anyone directly or indirectly contracted for or employed by them.
- B) Owner shall purchase and maintain such property, liability and other insurance as appropriate for risks attendant to the property upon which Consultant shall perform services and Project Engineer shall make available for Consultant's inspection Certificates evidencing such coverage.

- C) All insurance coverages required by these general conditions shall be for not less than limits of liability required by the Services Agreement or the laws and regulations of the State of Ohio or the federal government. All insurance contracts identified to this Agreement shall contain provisions or endorsements that coverage shall not be canceled, materially changed or renewal refused without at least thirty (30) days prior written notice to the Project Engineer and Consultant and to any other insured to whom a Certificate of Insurance has been issued.
- D) The Owner and Consultant intend that all policies purchased in accordance with this Article III will endeavor to protect the Owner, Consultant, subcontractors and suppliers and all other persons listed as additional insureds and will provide primary coverage for losses and damages. Any such policy purchased in accordance with this Agreement shall contain provisions to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Additionally, the Project Engineer waives all rights against the Consultant, subcontractors, consultants and the officers, Directors, employees and agents of any of them for any loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to the Project Engineer's property caused by or arising out of fire or other peril, whether or not insured by Project Engineer, and loss or damage to the completed project or part thereof caused by or arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the project by Project Engineer and any policy issued in accordance with the terms of this Agreement shall contain provisions to the effect that in the event of payment of any loss, damage or consequential loss, the insurers will have no rights of recovery against any contractor, subcontractor, consultant and the officers, Directors, employees or agents of any of them.

#### **IV. CONSULTANT'S RESPONSIBILITIES**

- A) Consultant shall perform the services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession. Consultant shall be solely responsible for the means, methods, techniques, materials used, and procedures applied in fulfilling its services and shall be solely responsible for the appointment of individuals responsible for the performance of the services contracted for by the Services Agreement.
- B) Unless specified elsewhere to the contrary, Consultant shall furnish, be compensated for, and assume all responsibility for all materials, equipment, labor, transportation, equipment and other facilities necessary for the furnishing, performing, testing and completion of the services contracted for by the Services Agreement.
- C) Consultant shall adhere to the time schedule for completion of the Services Agreement advising Project Engineer of any alterations necessary in the performance of such schedule and procure the Project Engineer's written agreement, which shall not be unreasonably withheld with regard to any such changes.
- D) If, during the course of providing services in accordance with this Services Agreement, Consultant determines that other or equal material or procedures will accomplish the work contracted for by this Agreement, Consultant shall notify the Project Engineer or its appropriate representatives following established change order procedures, if appropriate, and such substitution shall be approved by the Project Engineer's representative unless clear and convincing evidence is shown that the Consultant's basis for substitution is wrong. In such case, if the Consultant continues to adhere to its decision with regard to the above-mentioned substitution and the Project Engineer's representative refuses to approve a change order for the same, if necessary, Consultant may seek alternative dispute resolution of the issue as provided herein by mediation if the same will not substantially protract the time necessary for the completion of the rendition of services.
- E) If, in the performance of Consultant's services, other subcontractors or suppliers must be utilized, Consultant shall provide Project Engineer with the identity of any proposed subcontractor or supplier. Consultant refuses to deal with any subcontractor or supplier against whom the Project Engineer has made reasonable objection. If such subcontractor or supplier is rejected by the Project Engineer and Consultant has made diligent inquiry as to an acceptable substitute but is unable to substitute for the objected subcontractor or supplier, Project Engineer agrees to adjust the contract price as necessary for the hiring of replacement subcontractor or supplier.
- F) Project Engineer, with Consultant's assistance, shall obtain and pay for all permits and licenses, other governmental charges and inspection fees necessary for the completion of the services contracted for by this Services Agreement. This provision shall not be applied to relieve Project Engineer of its obligation for the payment of any costs the Project Engineer has assumed by the Services Agreement.
- G) Consultant shall give notices and comply with laws and regulations concerning the performance of services contracted for by this Service Agreement. If Consultant knows the performance of services shall be in violation of law or regulation, the Consultant shall bear all claims, costs, losses and damages caused by Consultant's actions.
- H) It shall be Consultant's responsibility to confine its activities to the premises on which the inspection services are rendered. After the rendition of services, Consultant agrees to remove all of all tools, appliances, equipment,

machinery and surplus materials. The site shall be left clean and ready for use by the Owner after the completion of the rendition of services contracted for by the Services Agreement.

- I) Consultant agrees that if any dispute should arise under the terms of this Services Agreement which is submitted to mediation, Consultant shall carry on with the rendition of services and adhere to the time schedule established for the completion of performance of services during all disputes or disagreements with the Project Engineer. No services shall be delayed or postponed pending resolution of any dispute or disagreement except as otherwise permitted in accordance with these general conditions or as agreed to in writing with the Project Engineer.
- J) Consultant agrees to indemnify and hold harmless Project Engineer and its officials, officers, Directors and employees to the fullest extent permitted by law from and against claims, costs, losses and damages (including reasonable legal fees and charges of other professional and all other dispute resolution costs) caused by or arising out of or resulting from the performance of the services rendered by Consultant incident to this Services Agreement provided that any such claim, cost, loss or damage is attributable to the negligent act, error or omission of the Consultant, subcontractor or supplier; provided, comparative negligence shall be taken into account in measuring Consultant's liability for damages hereunder.

## **V. PROJECT ENGINEER'S RESPONSIBILITIES**

- A) The Project Engineer shall not supervise, direct or have control or authority over nor be responsible for Consultant's means, methods, techniques, or procedures of rendering services or for the safety precautions and programs incident thereto or for any failure of the Consultant to comply with laws and regulations applicable to the furnishing of performance of the services contracted for by this Services Agreement. Project Engineer will not be responsible for Consultant's failure to perform or furnish the services in accordance with this Services Agreement.
- B) Project Engineer represents that the authorized governing authorities of Project Engineer have taken all steps necessary to approve the Services Agreement and to furnish Consultant with reasonable evidence of financial responsibility for the satisfaction of its payment obligation under the Services Agreement and that Consultant shall be paid in full for the rendition of services in accordance with the terms of the Services Agreement.
- C) Project Engineer shall take no action to impede Consultant's rendition of services in accordance with this Services Agreement and has taken all steps necessary to coordinate the services and work performed on the site so as to not impair Consultant's ability to render services. To this end, Project Engineer has designated its representative in dealing with Consultant who has full and complete authority to bind and represent the Project Engineer with regard to any and all decisions necessary in the fulfillment of the Services Agreement. If no such representative has been designated, the designated representative of the Project Engineer shall be any of its officers or its chief elected official.

## **VI. CHANGES IN WORK**

- A) Within the parameters of services to be rendered by Consultant, Project Engineer may, at any time or from time to time, order additions, deletions or revisions to the services to be rendered by Consultant; provided, Project Engineer and Consultant have agreed to compensation for the same. Such additions, deletions or revisions will be authorized by written amendment or change order signed by the Project Engineer's representative and acknowledged in writing by the Consultant. Upon receipt of any such acknowledged change order, Consultant shall promptly proceed with the services involved which will be performed under the applicable conditions of the contract documents except as amended. If the Project Engineer and Consultant are unable to agree as to the extent, if any, of an adjustment in the contract price or an adjustment of the contract terms, allowed as a result of a change order or otherwise, Consultant agrees to continue and the Project Engineer agrees to abide by the terms of the contract provided the parties mutually agree to submit the disagreement to mediation as provided for herein.

## **VII. PAYMENTS TO CONSULTANT AND COMPLETION**

- A) Consultant shall be paid in accordance with the provisions of Section II of the Services Agreement provided that if there is a dispute as to the services rendered, Project Engineer shall pay for all services rendered for which objection may not be reasonably made and provide Consultant with an accounting of those services performed for which objection is made and the basis, therefore. Such dispute shall be submitted to mediation if the parties cannot otherwise agree to its disposition.
- B) Consultant acknowledges that title to all materials and equipment covered by any payment from Project Engineer to Consultant whether incorporated in the services rendered or not will pass to the Project Engineer no later than the time of payment as specified in Section II of the Services Agreement free and clear of all liens.

## **VIII. TERMINATION OR SUSPENSION OF SERVICES**

- A) The Project Engineer may suspend services by the Consultant at any time and without cause provided Consultant has been paid to date for services rendered under the Services Agreement. Any resumption of services authorized by the Project Engineer shall only be in accordance with terms, conditions and contract price as agreeable by Consultant.
- B) Consultant may cease rendering services under this Services Agreement if, through no act or fault of the Consultant, the performance of services under the Agreement has been materially impaired in which case Consultant may refrain from rendering additional services until satisfactory payment for services rendered and to be rendered has been made by the Project Engineer and the impairment has been corrected.
- C) If, prior to the rendition of services under the Services Agreement, conditions materially change through the application of force majeure, the Consultant's obligation for the performance of services by the Project Engineer's obligation for the payment for same may be excused.

## **IX. DISPUTE RESOLUTION**

- A) The Project Engineer and Consultant agree that should any dispute arise between them with regard to any term and/or condition of the Services Agreement, the parties mutually consent to mediation.

## **X. MISCELLANEOUS**

- A) The Services Agreement shall be binding upon and inure to the benefit of the successors, representatives and assigns of the parties hereto; provided, that due to the personal service nature of the Agreement, it shall not be subject to assignment by the Consultant.
- B) Any notice required in accordance with the terms of this Agreement shall be effective and binding if made to the parties at their last business address known to the giver of the notice.
- C) The duties and obligations imposed by these general conditions and the rights and remedies available hereunder to the parties hereto, are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by law or regulation.

## **XI. SAFETY**

- A) Neither the professional activities of the Consultant, nor the presence of the Consultant or its employees and subconsultants at the construction site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance the contract documents and any health or safety precautions required by any regulatory agencies.
- B) The Consultant and its personnel have no authority to exercise any control over the Contractor or its employees in connection with their work or any health and safety programs or procedures.
- C) The Project Engineer agrees that the General Contractor shall be solely responsible for jobsite safety and warrants that this intent shall be carried out in the Owner's contract with the General Contractor.