

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 by KWAME RAOUL, Attorney General )  
 of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 IRONHUSTLER EXCAVATING, INC., an )  
 Illinois corporation, RIVER CITY )  
 CONSTRUCTION, LLC, an Illinois limited )  
 liability company, and VENOVICH )  
 CONSTRUCTION CO., an Illinois corporation, )  
 )  
 Respondents.

PCB No. 2020-16  
(Enforcement)

**NOTICE OF FILING**

TO: See attached service list

PLEASE TAKE NOTICE that I did on March 29, 2021, file with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Notice of Filing, Petitioner’s Motion for Summary Judgment, Certificate of Service and Exhibits listed on the Service List.

PEOPLE OF THE STATE OF ILLINOIS  
KWAME RAOUL, ATTORNEY  
GENERAL

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
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Dated: March 29, 2021

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<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
<b>by KWAME RAOUL, Attorney General</b>	)	
<b>of the State of Illinois,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB No. 20-16</b>
	)	<b>(Enforcement - Land)</b>
<b>IRONHUSTLER EXCAVATING, INC.,</b>	)	
<b>an Illinois corporation, and</b>	)	
<b>RIVER CITY CONSTRUCTION, LLC,</b>	)	
<b>an Illinois limited liability company.</b>	)	
	)	
<b>Respondents.</b>	)	

**MOTION FOR SUMMARY JUDGMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005 (2018), and Section 101.516 of the Illinois Pollution Control Board's Procedural Rules, 35 Ill. Adm. Code 101.516, hereby moves for Summary Judgment against the Respondents, IRONHUSTLER EXCAVATING, INC., an Illinois corporation ("IRONHUSTLER"), and RIVER CITY CONSTRUCTION, LLC, an Illinois limited liability company ("RIVER CITY"), and in support hereof, states as follows:

**A. PROCEDURAL HISTORY**

The Complaint was filed on September 16, 2019 along with a Stipulation and Proposal for Settlement with Respondent, Venovich Construction Co., owner of the Disposal Site. The Board approved the Stipulation with Venovich Construction Co. on November 7, 2019. IRONHUSTLER answered the Complaint on November 20, 2019 and asserted a purported affirmative defense

consisting of fourteen paragraphs. On November 27, 2019, Complainant filed its Motion to Strike Affirmative Defense filed by IRONHUSTLER. RIVER CITY answered the Complaint on November 21, 2019 and asserted no affirmative defenses. In its January 10, 2020 response, IRONHUSTLER stated that it did not object to “the striking of the mitigating factors that were alleged as affirmative defenses” if “the striking of those mitigating factors shall not be deemed a waiver of, or a preclusion against, introducing at hearing evidence regarding mitigating factors.” (p. 1). In its April 16, 2020 Order, the Board construed IRONHUSTLER’s response as a withdrawal of the fourteen numbered paragraphs designed as affirmative defense. (p. 1). On January 3, 2020, RIVER CITY submitted its responses to Complainant’s First Set of Interrogatories and First Request for Production of Documents. RIVER CITY produced 1,614 pages of documents. On January 7, 2020, IRONHUSTLER submitted its responses to Complainant’s First Set of Interrogatories and First Request for Production of Documents. IRONHUSTLER produced documents Nos. IHX-000001-000263.

**B. COMPLAINANT’S CASE**

The pleadings, admissions on file, and the affidavit of Jason Thorp, Illinois EPA inspector, establish that there is no genuine issue of material fact, and that Complainant is entitled to judgment as to a matter of law. In support of this motion, Complainant relies upon the following documents which are incorporated herein as part of this Motion for Summary Judgment:

1. Complainant’s September 16, 2019 Complaint (“Complaint”);
2. Answer to Complaint by IRONHUSTLER (November 20, 2019)  
 (“IRONHUSTLER Answer”);
3. Answer to Complaint by RIVER CITY (November 21, 2019)  
 (“RIVER CITY Answer”);



4. Affidavit of Jason Thorp dated March 23, 2021 with Attachment 1 (inspection photos of Disposal and Source Sites) (“Thorp Affidavit”) (attached as Exhibit “A” hereto);
5. Answer to Complainant’s First Set of Interrogatories by RIVER CITY (January 3, 2020) (Attached as Exhibit “B” hereto);
6. Answer to Complainant’s First Set of Interrogatories by IRONHUSTLER (January 7, 2020) (Attached as Exhibit “C” hereto);
7. February 26, 2016 Contract between Delavan CUSD No. 703 and RIVER CITY (Excerpts) produced by RIVER CITY on January 3, 2020. (Attached as Exhibit “D” hereto);
8. The June 28, 2016 “Subcontract for Building Construction” between RIVER CITY and IRONHUSTLER produced by RIVER CITY on January 3, 2020. (Attached as Exhibit “E” hereto).
9. Kennel Trucking Hourly Time Sheets for July 7, 2017 produced by IRONHUSTLER on January 7, 2020 as “IHX 000044-000046.” (Attached as Exhibit “F” hereto).
10. Cover letter submitted with landfill tickets produced by IRONHUSTLER on January 7, 2020 as “IHX 000317.” (Attached as Exhibit “G” hereto).

**C. STATEMENT OF UNCONTESTED FACTS**

1. IRONHUSTLER is an Illinois corporation engaged in the business of providing excavation and demolition services. IRONHUSTLER Answer at ¶ 5.
2. RIVER CITY is an Illinois limited liability company engaged in the business of acting as a general contractor for construction and demolitions projects. RIVER CITY Answer at ¶ 6.
3. On February 26, 2016, the Delavan CUSD No. 703 contracted with RIVER CITY for the construction of a new high school wing which included the demolition, removal and

disposal of a portion of the existing building located at 817 S. Locust Street, Delavan, Tazewell County, Illinois (“Source Site”). RIVER CITY Answer at ¶ 9; IRONHUSTLER Answer at ¶ 9; Exhibit “A”.

4. RIVER CITY was the general contractor for the Delavan CUSD No. 703 project. Exhibit “B” at No. 7.

5. The February 26, 2016 contract between Delavan CUSD No. 703 as owner and RIVER CITY as general contractor included demolition of the existing high school building. Exhibit “D”, page 1.

6. The RIVER CITY employees responsible for supervising the Delavan CUSD No. 703 project were Cody Gerdes, Vice President of Project Management, Kevin Beal, Project Manager for the Delavan CUSD No. 703 project, and Jon Stegmaier, Superintendent for the Delavan CUSD No. 703 project. Exhibit “B” at No. 10.

5. Part of the agreement between RIVER CITY and Delavan CUSD No. 703 was AIA A201-2007, General Conditions of the Contract for Construction, which was incorporated by reference. (Exhibit “D” – AIA A201-2007, Article 3).

6. Section 3.3.1 of the general contract conditions (A201) gives the Contractor (RIVER CITY) the sole authority and responsibility to control and supervise the contract work. (Exhibit “D” – AIA A201-2007, Article 3).

7. Section 3.3.2 (A201) makes the contractor responsible for the acts and omissions of subcontractors. (Exhibit “D” – AIA A201-2007, Article 3).

8. Under Section 3.7.2 (A201), compliance with law, and securing permits, is likewise the contractor’s responsibility. (Exhibit “D” – AIA A201-2007, Article 3)

9. On June 28, 2016, RIVER CITY subcontracted the demolition, removal, and

disposal work to IRONHUSTLER. RIVER CITY Answer at ¶ 10; IRONHUSTLER Answer at ¶ 10; Exhibit “B” at 12; Exhibit “C” at No. 12.

10. Pursuant to the June 28, 2016 “Subcontract for Building Construction” between RIVER CITY and IRONHUSTLER, RIVER CITY designated one or more persons who were RIVER CITY’s authorized representative(s) a) on-site and b) off-site. Such authorized RIVER CITY representative(s) were to be the only person(s) IRONHUSTLER was to look to for instructions, orders and/or directions, except in case of emergency. Exhibit “E”, Sec. 7.2. Under certain circumstances, the Contractor (RIVER CITY) has the authority to terminate the Subcontractor (IRONHUSTLER). Exhibit “E”, Sec. 10.1.2.

11. The IRONHUSTLER employees responsible for supervising the Delavan CUSD No. 703 project were Rob Frederick, Project Manager for the Delavan CUSD No. 703 project, and Tim DeHart, Superintendent for the Delavan CUSD No. 703 project. Exhibit “C” at Nos. 2, 5 and 8.

12. Robert E. Kennel Trucking, Inc. (“Kennel Trucking”), was retained by IRONHUSTLER to haul debris from the Delavan CUSD No. 703 project site (“Source Site”). Exhibit “C” at No. 4.

13. After becoming aware that general construction demolition debris had been open dumped on his property, Joseph Venovich contacted IRONHUSTLER. IRONHUSTLER Answer at ¶ 18.

14. IRONHUSTLER removed debris from the Disposal Site prior to the Illinois EPA’s re-inspection of the Venovich property on November 16, 2017. IRONHUSTLER provided the Illinois EPA with receipts documenting the disposal of debris at the Indian Creek Landfill on July 17, 2017. IRONHUSTLER Answer at ¶ 20.

15. Neither IRONHUSTLER nor RIVER CITY applied for or were granted a permit from Illinois EPA to develop and operate a landfill at the Venovich property. IRONHUSTLER Answer at ¶ 21.

16. The “diversion” of the demolition debris from the previously arranged lawful disposal facility to the Disposal Site occurred on July 7, 2017. IRONHUSTLER Answer/Affirmative Defense at ¶ 3 and Exhibit “F” (Kennel Trucking Hourly Time Sheets for July 7, 2017). The Hourly Time Sheets for July 7, 2017 indicate up to twenty-four truckloads of waste material from the Delavan School Source Site did not go to the landfill but were diverted. Exhibit “F.”

17. After learning of the Illinois EPA inspection at the Venovich property, IRONHUSTLER prohibiting any future material from being diverted to the Disposal Site and directed that any material diverted to the Venovich property be removed and delivered to the Tazewell County Landfill. IRONHUSTLER Answer/Affirmative Defense at ¶ 5.

18. The employees of IRONHUSTLER who were involved in the diversion of the material from the previously arranged lawful disposal facility to the Disposal Site are no longer employed by IRONHUSTLER. IRONHUSTLER Answer/Affirmative Defense at ¶ 11.

19. Corey Miller, formerly employed as an operator by IRONHUSTLER, operated the IRONHUSTLER John Deere 650H dozer observed at the Venovich property on July 13, 2017 (as shown in Illinois EPA inspection photo no. 07132017-20). Exhibit “A” and Exhibit “C”, No. 9.

20. The John Deere 650H dozer was transported to the Disposal Site by former IRONHUSTLER truck driver Jim Fitz. Exhibit “C”, No. 9.

21. Tim DeHart, the former superintendent for IRONHUSTLER, was terminated from his employment with IRONHUSTLER because of his role in the Delavan CUSD project. Exhibit

“C”, No. 10.

22. On July 17, 2017, IRONHUSTLER removed 567.32 tons of demolition debris from the Disposal Site (9701 Kings Road, Hopedale, Illinois) and transported it to the Tazewell County Landfill. Exhibit “G”.

23. On July 13, 2017, the Illinois EPA inspected the Disposal Site. Approximately 750 cubic yards of open dumped demolition debris was located at the end of King Road along the Mackinaw River. Some of the demolition debris was located in water along the edge of the river. Exhibit “A”, Thorp Affidavit at ¶ 2.

24. The demolition debris contained electrical wire, metal radiators, wood, rebar, wire conduit, metal sheeting, metal angle iron, painted brick, plywood, metal studs, metal pipe, painted concrete, slag, and ceramic tile. A John Deere 650H dozer with IRONHUSTLER markings was located at the Disposal Site. Exhibit “A”, Thorp Affidavit at ¶ 3.

25. On July 13, 2017, the Illinois EPA also inspected the Source Site in Delavan, Illinois. Demolition debris was present along with a Caterpillar 329D tracked excavator and a Caterpillar 330DL tracked excavator both with IRONHUSTLER markings. Exhibit “A”, Thorp Affidavit at ¶ 4.

26. On July 13, 2017, Mr. Thorp took thirty-six photographs of the Disposal Site and ten photographs of the Source Site. Exhibit “A”, Thorp Affidavit at ¶ 6 and Attachment 1.

27. True and correct copies of the July 13, 2017 inspection photographs are attached to Exhibit “A”, the Thorp Affidavit, as Attachment “1” - Photos.

#### **D. STANDARD OF REVIEW**

Section 101.516(b) of the Board’s Procedural Rules, 35 Ill. Adm. Code 101.516(b), provides as follows:

- (b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b); *People ex rel. Madigan v. Lincoln, Ltd.*, 383 Ill. App. 3d 198, 204 (1st Dist. 2008). A party opposing a motion for summary judgment may not rest on its pleadings but must “present a factual basis which would arguably entitle [it] to a judgment.” *Gehrman v. Zajac*, 34 Ill. App. 3d 164, 166 (1st Dist. 1975); *Gauthier v. Westfall*, 266 Ill. App. 3d 213, 219, (2nd Dist. 1994).

Inferences or conclusions drawn from the evidentiary material before the Board must be reasonable; courts are not required to adduce remote factual possibilities in favor of the opponent of a motion summary judgment. *Gehrman*, 34 Ill. App. 3d at 166. The use of summary judgment is encouraged under Illinois law to facilitate litigation and avoid unnecessary trials. *Lincoln*, 383 Ill. App. 3d at 204. As was noted by the Supreme Court in *Allen v. Meyer*, 14 Ill. 2d. 284, 292 (1958):

Summary judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein is presented no genuine issue as to any material fact, is to be encouraged. The benefits of summary judgment in a proper case inure not only to the litigants, in the saving of time and expenses, but to the community in avoiding congestion of trial calendars and the expenses of unnecessary trials.

#### **E. APPLICABLE LAW**

The Illinois Environmental Protection Act (“Act”) and the Illinois Litter Control Act provide definitions pertinent to the Complaint and this Motion for Summary Judgment. Sections 3.185, 3.305, 3.385, 3.445, and 3.535 of the Act, 415 ILCS 5/3.185, 3.305, 3.385, 3.445 and 3.535

(2018), respectively, provide the following definitions:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

“Refuse” means waste.

“Sanitary landfill” means a facility permitted by the Agency for the disposal of waste on land . . .

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . .

Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2018), provides the following definition:

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, cigarettes, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2018), provides, in pertinent part, the following definition:

(a) “General construction or demolition debris” means non-hazardous,

uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials.

\* \* \*

Each of the seven counts of the Complaint allege a violation of one of the subsections of Section 21 of the Act, 415 ILCS 5/21 (2018) against both Respondents. Section 21 of the Act, provides in pertinent part, as follows:

No person shall:

- (a) Cause or allow the open dumping of any waste.

\* \* \*

- (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit . . .
2. In violation of any regulations or standards adopted by the Board under this Act; or

\* \* \*

- e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

\* \* \*

- (p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the



following occurrences at the dump site:

(1) litter;

\* \* \*

(4) deposition of waste in standing or flowing waters;

\* \* \*

(7) deposition of:

(i) general construction or demolition debris as defined in Section 3.160(a) of this Act . . .

\* \* \*

The Board has found that owners' use of independent contractors may relieve the owner of liability under the Act, but owners can still be liable for the actions of independent contractors. *People v. Wood River Refining*, PCB No. 99-120 (August 8, 2002), slip op. at 10. The Act makes it unlawful to “cause” or “allow” pollution. Furthermore, a person can cause or allow a violation of the Act without knowledge or intent. *County of Will v. Utilities Unlimited, Inc.*, AC 97-041 (July 24, 1997), slip op. at 4 (1997 WL 436928) (citing *People v. Fiorini*, 143 Ill. 2d 318, 335-336 (1991)). The determinative question is whether the “respondent is in such a relationship to the transaction that it is reasonable to expect him to exercise control to prevent pollution.” *Wood River Refining*, slip op. at 11 (citing *EPA v. James McHugh Construction Co.*, PCB 71-291 (May 17, 1972)).

In *James McHugh Construction Co.*, the Board found the City of Chicago liable for "allowing" water pollution that its independent contractors caused. In so doing, the Board observed:

The statute makes it unlawful not only to “cause” but also to “allow” pollution. We think this language goes beyond the common law and imposes an affirmative duty on persons in a position of potential control to take action to prevent pollution. We hold that the common law of independent contractors is not incorporated as such into the statute, but that the question for our decision is

whether, in light of statutory policy, a respondent is in such a relationship to the transaction that it is reasonable to expect him to exercise control to prevent pollution.

*McHugh*, PCB 71-291, slip op. at 3.

Knowledge, awareness, or intent are not elements of a violation of provisions of the Act prohibiting a person from causing or allowing the open dumping of waste; instead, liability is found when the Illinois Environmental Protection Agency (Illinois EPA) shows the alleged polluter had the capability of controlling the pollution or at least had control of the premises where the pollution occurred. *People v. Lincoln, Ltd.*, 70 N.E.3d 661, 670 (1st Dist. 2016). The class of persons who may “cause” open dumping in violation of the [Act] is not limited to owners or operators of the disposal site, but rather, an off-site generator, as a “person,” may also “cause” open dumping; the Act has a broad definition of “person,” which contains no qualifying language limiting its scope to entities having an ownership interest in, or control over, a disposal site, and neither ownership nor control of an allegedly illegal disposal site is necessary to effect the consolidation of refuse there. *People ex rel. Ryan v. McFalls*, 313 Ill.App.3d 223, 227 (3rd Dist. 2000).

## **F. ARGUMENT**

### **1. IRONHUSTLER**

IRONHUSTLER’s Answer/Affirmative Defense, its Answer to Complainant’s First Set of Interrogatories, the Kennel Trucking time sheets from July 7, 2017 and the John Deere 650H dozer with IRONHUSTLER markings photographed at the Disposal Site all clearly establish its liability for the violations in the Complaint. IRONHUSTLER employees were responsible for supervising the Delavan CUSD No. 703 project including Rob Frederick, Project Manager for the Delavan CUSD No. 703 project, and Tim DeHart, Superintendent for the Delavan CUSD No.

703 project. Kennel Trucking was retained by IRONHUSTLER to haul debris from the Delavan CUSD No. 703 project site (“Source Site”). The Kennel Trucking time sheets show up to twenty-four truckloads were taken to a “farm” (not the landfill) on July 7, 2017.

IRONHUSTLER’s purported Affirmative Defense at ¶ 3 states the “diversion” occurred on July 7, 2017. IRONHUSTLER staff and equipment were present at the Venovich Disposal Site. (Photo 20). After becoming aware that general construction and demolition debris had been open dumped on his property, Joseph Venovich contacted IRONHUSTLER. IRONHUSTLER removed debris from the Venovich property prior to the Illinois EPA’s re-inspection on November 16, 2017. IRONHUSTLER provided the Illinois EPA with receipts documenting the disposal of debris at the Indian Creek Landfill on July 17, 2017.

Neither IRONHUSTLER nor RIVER CITY applied for or were granted a permit from Illinois EPA to develop and operate a landfill at the Venovich Disposal Site. IRONHUSTLER’s Answer at ¶ 21. Subsequent to learning of the Illinois EPA inspection at the Venovich Disposal Site, IRONHUSTLER prohibiting any future material from being diverted to the Venovich property and directed that any material diverted to the Venovich property be removed and delivered to the Tazewell County Landfill. IRONHUSTLER’s Affirmative Defense at ¶ 5. The employees of IRONHUSTLER who were involved in the diversion of the material from the previously arranged lawful disposal facility to the Disposal Site were terminated by IRONHUSTLER. IRONHUSTLER’s Affirmative Defense at ¶ 4.

Corey Miller, formerly employed as an operator by IRONHUSTLER, operated the IRONHUSTLER John Deere 650H dozer observed at the Venovich Disposal Site on July 13, 2017 (as shown in Illinois EPA inspection photo 20). Exhibit “A” and Exhibit “C” at ¶ 9. The John Deere 650H dozer was transported to the Venovich property by former IRONHUSTLER

truck driver Jim Fitz. Exhibit “C” at ¶ 9. Tim DeHart, the former superintendent for IRONHUSTLER, was terminated from his employment with IRONHUSTLER because of his role in the Delavan CUSD project. Exhibit “C” at ¶ 10. On July 17, 2017, IRONHUSTLER removed 567.32 tons of demolition debris from the Disposal Site (9701 Kings Road, Hopedale, Illinois) and transported it to the Tazewell County Landfill.

## **2. RIVER CITY**

RIVER CITY is liable for the violations alleged in the Complaint regardless of retaining IRONHUSTLER for the excavation and hauling portions of the project and regardless of whether it had actual knowledge of the diversion of the general construction and demolition debris to the unpermitted Venovich Disposal Site. RIVER CITY is a “person” which had control over the pollution, i.e., the general construction and demolition debris and is therefore liable for the violations alleged in the Complaint. *Lincoln, Ltd.*, 70 N.E.3d at 670. In *McHugh*, the City of Chicago was found liable where it had an engineer on site to supervise the contract. PCB 71-291, slip op. at 4-5. Here, RIVER CITY had at least three supervisors responsible for implementation of the contract for the project both on-site and off-site.

RIVER CITY employees were responsible for supervising the Delavan CUSD No. 703 project including Cody Gerdes, Vice President of Project Management, Kevin Beal, Project Manager for the Delavan CUSD No. 703 project, and Jon Stegmaier, Superintendent for the Delavan CUSD No. 703 project. Exhibit “B” at ¶10. Part of the agreement between RIVER CITY and Delavan CUSD No. 703 was AIA A201-2007, General Conditions of the Contract for Construction, which was incorporated by reference. Exhibit “D.” Section 3.3.1 of the general contract conditions (A201) gives the Contractor (RIVER CITY) the sole authority and responsibility to control and supervise the contract work. Section 3.3.2 (A201) makes the

contractor responsible for the acts and omissions of subcontractors. Under Section 3.7.2 (A201), compliance with law, and securing permits, is likewise the contractor's responsibility.

Pursuant to the June 28, 2016 "Subcontract for Building Construction" between RIVER CITY and IRONHUSTLER (Exhibit "E"), RIVER CITY was to designate one or more persons to be RIVER CITY's authorized representative(s) a) on-site and b) **off-site** (emphasis added). The authorized RIVER CITY representative(s) were to be the only person(s) IRONHUSTLER was to look to for instructions, orders and/or directions, except in case of emergency. Section 7.2. RIVER CITY had the authority to termination IRONHUSTLER. Section 10.1.2. IRONHUSTLER was obligated under the subcontract agreement to complete "[d]isposal of all debris" and [l]egal disposition of all debris generated." Section 16.2. By its failure to control and supervise IRONHUSTLER as it was obligated to do, RIVER CITY allowed the improper disposal of general construction and demolition debris at the Disposal Site and is liable for the violations alleged in the Complaint.

In a previous Board case finding IRONHUSTLER and its contractor, Intra-Plant Maintenance, Inc., both liable for open dumping violations, the Board held as follows concerning IRONHUSTLER's contractor:

It has been established that "knowledge or intent is not an element to be proved for a violation of the Act . . . is the established rule in Illinois." *People v. Fiorini*, 143 Ill. 2d. 318, 336 (1991). See also *Freeman Coal Mining Corp. v. PCB*, 621 Ill. App. 3d 157, 163, 313 N.E.2d 616, 621 (5th Dist. 1974) (the Act is *malum prohibitum* and no proof of guilty knowledge or *mens rea* is necessary to find liability).

Furthermore, "[t]he analysis applied by courts in Illinois for determining whether an alleged polluter has violated the Act is whether the alleged polluter exercised sufficient control over the source of the pollution." *People v. A. J. Davinroy Contractors*, 249 Ill. App. 3d 788, 793 (1993) (*quoting People v. Fiorini*, 143 Ill. 2d at 346 (internal citations omitted). Additionally, "[t]he Act contains a broad definition of "person." The definition contains no qualifying language limiting its scope to entities having an ownership interest in, or control over, a disposal site.

Neither ownership nor control of an allegedly illegal disposal site is necessary to affect the consolidation of refuse. Therefore, an off-site generator, such as Intra-Plant or Ironhustler, "may cause open dumping within the plain meaning of subsections 21(a)" of the Act. *People ex rel. Ryan v. McFalls*, 728 N.E.2d 1152, 1155 (3rd Dist. 2000) (internal citations omitted).

**By contracting to construct a wastewater treatment plant for Altivity, Intra-Plant [the contractor] received control over those tasks incidental to completing the project, including disposal of unusable, excavating fill material. Intra-Plant was required to properly dispose of the waste. Therefore, the Board finds Intra-Plant exercised sufficient control of the waste to support a finding that it caused or allowed open dumping of waste.** (Emphasis added).

*People v. Altivity et al.*, PCB 12-021 (July 25, 2013), slip op. at 7.

### 3. SUMMARY OF ARGUMENT

There is no genuine issue of material fact that Respondents caused or allowed the open dumping of waste at the Disposal Site, in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2018).

There is no genuine issue of material fact that Respondents caused or allowed the open dumping of waste in such a manner that resulted in litter at the Disposal Site, in violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2018).

There is no genuine issue of material fact that Respondents caused or allowed the open dumping of waste in such a manner that waste was disposed of in standing or flowing waters at the Disposal Site, in violation of Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2018).

There is no genuine issue of material fact that Respondents caused or allowed the open dumping of waste in such a manner that general construction or demolition debris was disposed of at the Disposal Site, in violation Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2018).

There is no genuine issue of material fact that Respondents developed and operated a landfill at the Disposal Site without a permit granted by Illinois EPA, in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018).

There is no genuine issue of material fact that Respondents conducted a waste-disposal operation at the Disposal Site in violation of a regulation adopted by the Board, Section 812.101(a) of the Board's Solid Waste Disposal Regulations, 35 Ill. Adm. Code 812.101(a), and thereby further violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018).

There is no genuine issue of material fact that Respondents disposed of, stored and/or abandoned wastes at the Disposal Site, a site which did not meet the requirements of the Act and regulations, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2018 There is no genuine issue of material fact that).

**G. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

After the Board finds a violation, the Board considers the factors set forth in Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), to create an appropriate remedy. Those factors are:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Complainant states the following:

1. Human health and the environment were threatened by Respondents' violations. The violations resulted in major potential for harm as the actions had a significant adverse effect on implementation of Illinois EPA's solid waste program. General construction and demolition debris was deposited at the Venovich property without the owner's permission. Further, the demolition debris was deposited along and in the Mackinaw River.
2. Demolition of the Delavan CUSD No. 703 building had social and economic value if all the general construction and demolition debris had been properly disposed of at a site permitted by the Illinois EPA as a landfill and meeting the requirements of the Act and regulations.
3. The disposal used site by Respondents was not permitted by the Illinois EPA as a landfill, did not meet the requirements of the Act and of the regulations and was not suitable for the disposal of the general construction and demolition debris.
4. Disposal of the general construction and demolition debris at a permitted landfill meeting the requirements of the Act and regulations was and is both technically practicable and economically reasonable.
5. Respondents' violations of the Act and the Board Regulations was ongoing from the "diversion" or open dumping of the waste at the disposal site by IRONHUSTLER's on July 7, 2019, through the Illinois EPA inspection on November 16, 2019. IRONHUSTLER submits that it hauled the waste to the Tazewell County Landfill on July 17, 2019.

#### **H. CONSIDERATION OF SECTION 42(h) FACTORS**

To impose a civil penalty, the Board must consider the factors contained within Section 42(h) of the Act, 415 ILCS 5/42(h) (2010). Those factors are:

1. the duration and gravity of the violation;



2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

6. whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and

7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Complainant states as follows:

1. Although the violation may not have been long in duration, the gravity of the violations must be considered major in their potential for harm and major in their deviation from the statutory and regulatory requirements. General construction and demolition debris was deposited at the Venovich property without the owner's permission. Further, the demolition debris was deposited along and in the Mackinaw River.

2. Respondents returned to compliance with the Act and Board regulations only after a complaint resulted in Illinois EPA inspections, Mr. Venovich's demand IRONHUSTLER remove the waste and then, finally, IRONHUSTLER's removal of the waste to the landfill. Illinois EPA confirmed the general construction and demolition debris had been removed before the inspection on November 16, 2017.

3. There was an economic benefit in an undetermined amount to Respondents in disposing of the general construction and demolition debris at an out of the way, illegal disposal site instead of properly disposing of it at a permitted landfill and paying the required fees.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eighty Thousand Dollars (\$80,000) as to IRONHUSTLER and a penalty of Thirty-Five Thousand Dollars (\$35,000) as to RIVER CITY will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, RIVER CITY has no previously adjudicated violations of the Act.

IRONHUSTLER has several prior violations for open dumping. IRONHUSTLER was ordered to pay a penalty of \$10,000 on July 25, 2013 in PCB 2012-021 for open dumping violations. IRONHUSTLER continues to owe \$406.61 in post-judgment interest on the subsequent Tazewell Co. Circuit Court judgment entered in 15-CH-95.

IRONHUSTLER was ordered to pay a penalty of \$3,000 on February 28, 2019 in AC 2019-017 for additional open dumping violations.

6. Respondents did not self-report the violations.

7. Respondents have not offered to perform a Supplemental Environmental Project.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the

Board enter a final order:

- A) Granting Complainant's motion for summary judgment;
- B) Finding that the Respondents, IRONHUSTLER EXCAVATING, INC., an Illinois corporation, and RIVER CITY CONSTRUCTION, LLC, an Illinois limited liability company, violated Section 21(a), 21(p)(1), 21(p)(4), 21(p)(7)(i), 21(d)(1), 21(d)(2) and 21(e) of the Act, 415 ILCS 5/21(a), 21(p)(1), 21(p)(4), 21(p)(7)(i), 21(d)(1), 21(d)(2) and (e) (2018), and 35 Ill. Adm. Code 812.101(a);
- C) Ordering the Respondents to remove the miscellaneous fill material from the disposal site and properly dispose of it in compliance with the Act.
- D) Ordering the Respondents to cease and desist from any further violations of the Act and associated regulations;
- E) Award the Complainant a penalty of \$80,000 from IRONHUSTLER and \$35,000 from RIVER CITY for the violations of the Act;
- F) Grant such other relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
KWAME RAOUL, ATTORNEY GENERAL

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

By: s/Raymond J. Callery  
RAYMOND J. CALLERY  
Assistant Attorney General  
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(217) 782-9031  
[rcallery@atg.state.il.us](mailto:rcallery@atg.state.il.us)  
[ebs@atg.state.il.us](mailto:ebs@atg.state.il.us)

Dated: March 29, 2021

**CERTIFICATE OF SERVICE**

I, Raymond J. Callery, an Assistant Attorney General, certify that on the 29th day of March, 2021, I caused to be served a copy of the foregoing Notice of Filing, Petitioner's Motion for Summary Judgment, Certificate of Service and Exhibits by placing same in the United States Mail, Springfield, IL to the following:

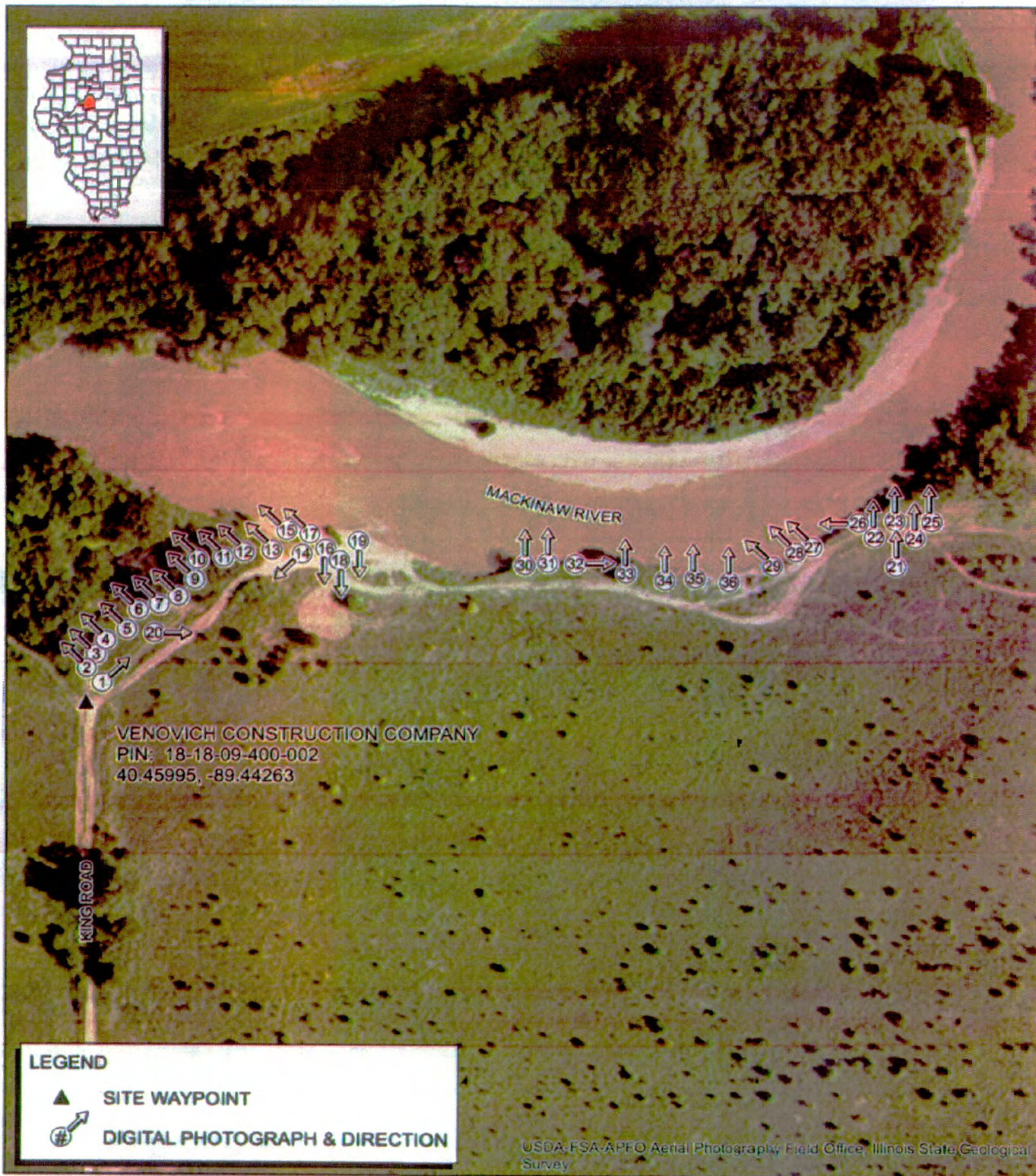
Venovich Construction Company  
c/o Joseph L. Venovich, Jr., Registered Agent  
207 South Sampton Street  
P.O. Box 410  
Tremont, IL 61568

Kenneth Eathington  
Quinn Johnston Henderson & Pretorius  
227 N.E. Jefferson Street  
Peoria, IL 61602

Jay H. Scholl  
Davis & Campbell L.L.C.  
401 Main Street, Suite 1600  
Peoria, IL 61602-1241

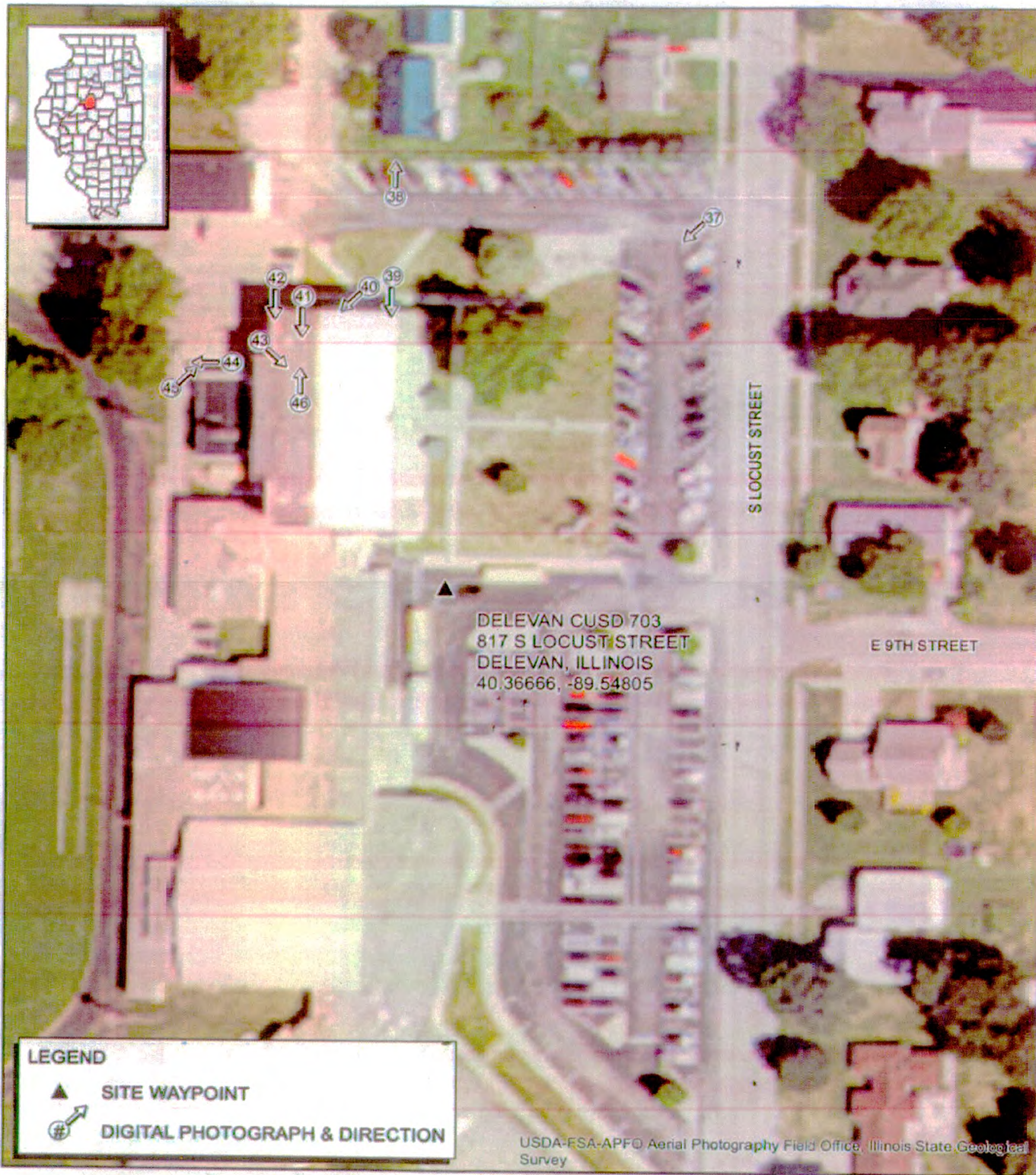
s/Raymond J. Callery  
Raymond J. Callery  
Assistant Attorney General  
500 South Second Street  
Springfield, IL 62701  
217/782-9031  
[rcallery@atg.state.il.us](mailto:rcallery@atg.state.il.us)  
[ebs@atg.state.il.us](mailto:ebs@atg.state.il.us)





<b>ILLINOIS EPA - DISPOSAL SITE MAP</b>	<b>INSPECTION DATE: 07/13/2017</b>		
1798095013 – TAZEWELL COUNTY VENOVICH CONSTRUCTION COMPANY FOS	<b>INSPECTOR/DRAWN BY: JT/JT</b>		
SCALE: 0 20 40 60 80 METERS			





**ILLINOIS EPA - SOURCE SITE MAP**  
1798095013 - TAZEVELL COUNTY  
VENOVICH CONSTRUCTION COMPANY  
FOS

INSPECTION DATE: 07/13/2017  
INSPECTOR/DRAWN BY: JT/JT  
SCALE:  
0 10 20 30 40  
METERS







1798095013 -- Tazewell County  
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**DATE:** July 13, 2017

**TIME:** 8:57 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northeast.

**PHOTOGRAPH NUMBER:** 1

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-001.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts an overview of the demolition debris not meeting the definition of CCDD.



**DATE:** July 13, 2017

**TIME:** 9:00 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 2

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-002.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris not meeting the definition of CCDD as it contained electrical wire and a metal radiator.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:00 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 3

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-003.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris not meeting the definition of CCDD as it contained electrical wire and a metal radiator.



**DATE:** July 13, 2017

**TIME:** 9:01 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 4

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-004.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris not meeting the definition of CCDD as it contained wood and rebar.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:04 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 5

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-005.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris not meeting the definition of CCDD as it contained wire conduit, metal sheeting, metal angle, painted brick, plywood, wood and rebar.



**DATE:** July 13, 2017

**TIME:** 9:05 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 6

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-006.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris not meeting the definition of CCDD as it contained electrical wire, metal, metal radiator, wood and rebar.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:09 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northwest.

**PHOTOGRAPH NUMBER:** 7

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-007.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained wire conduit,  
electrical wire, metal sheeting, and  
wood.



**DATE:** July 13, 2017

**TIME:** 9:12 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northwest.

**PHOTOGRAPH NUMBER:** 8

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-008.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained metal, metal  
sheeting, and wood.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:13 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northwest.

**PHOTOGRAPH NUMBER:** 9

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-009.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained a chair base,  
metal sheeting, metal pipe, wood  
and rebar.



**DATE:** July 13, 2017

**TIME:** 9:14 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northwest.

**PHOTOGRAPH NUMBER:** 10

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-010.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained metal  
sheeting, plywood, wood and rebar.



**DOCUMENT FILE NAME:**  
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**DATE:** July 13, 2017

**TIME:** 9:16 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northwest.

**PHOTOGRAPH NUMBER:** 11

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-011.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained metal, metal  
pipe, metal sheeting, wood and  
rebar.



**DATE:** July 13, 2017

**TIME:** 9:18 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northwest.

**PHOTOGRAPH NUMBER:** 12

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-012.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained wire conduit,  
electrical wire, metal sheeting,  
metal studs, painted brick and  
wood.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:19 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northwest.

**PHOTOGRAPH NUMBER:** 13

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-013.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained rebar.



**DATE:** July 13, 2017

**TIME:** 9:19 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the southwest.

**PHOTOGRAPH NUMBER:** 14

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-014.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts an  
overview of the demolition debris  
not meeting the definition of  
CCDD.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:20 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 15

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-015.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris along the Mackinaw River not meeting the definition of CCDD along the Mackinaw River.



**DATE:** July 13, 2017

**TIME:** 9:21 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the south.

**PHOTOGRAPH NUMBER:** 16

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-016.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris along the Mackinaw River not meeting the definition of CCDD as it contained wood.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:22 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 17

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-017.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris along the Mackinaw River not meeting the definition of CCDD as it contained metal pipe and rebar.



**DATE:** July 13, 2017

**TIME:** 9:22 a.m.

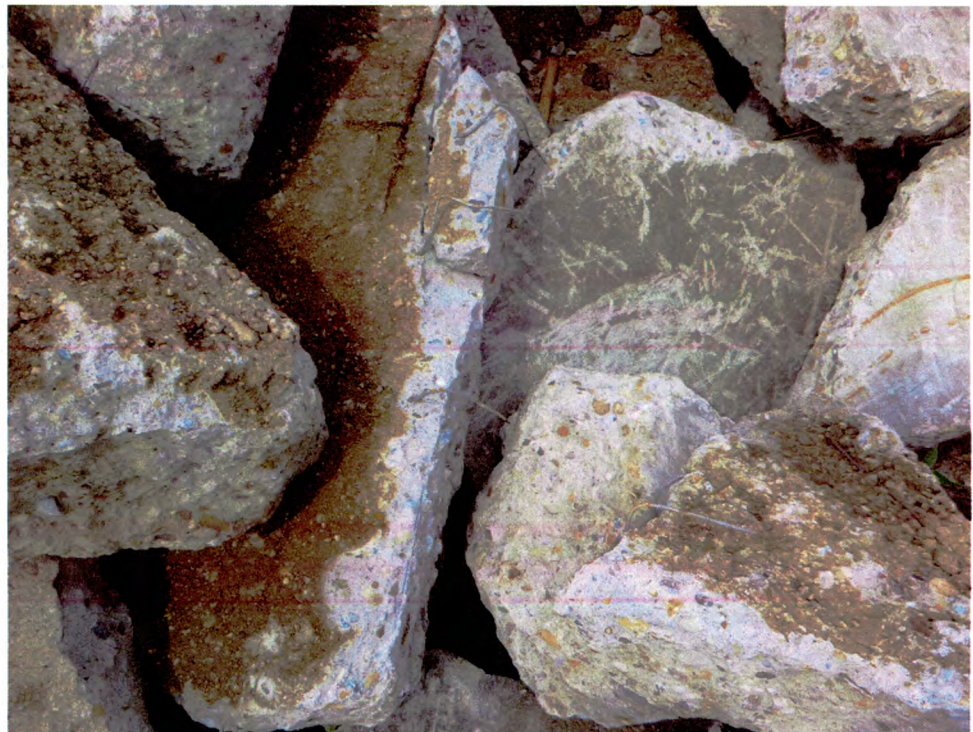
**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the south.

**PHOTOGRAPH NUMBER:** 18

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-018.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris along the Mackinaw River not meeting the definition of CCDD as it contained metal wire.



**DOCUMENT FILE NAME:**  
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**DATE:** July 13, 2017

**TIME:** 9:23 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the south.

**PHOTOGRAPH NUMBER:** 19

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-019.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris along the Mackinaw River  
not meeting the definition of CCDD  
as it contained metal wire and  
wood.



**DATE:** July 13, 2017

**TIME:** 9:26 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the east.

**PHOTOGRAPH NUMBER:** 20

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-020.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts a John  
Deere 650H dozer with IHX  
markings.



**DOCUMENT FILE NAME:**  
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**DATE:** July 13, 2017

**TIME:** 9:34 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 21

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-021.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts an  
overview of demolition debris not  
meeting the definition of CCDD.



**DATE:** July 13, 2017

**TIME:** 9:34 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 22

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-022.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained slag, ceramic  
tile, and wood.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:34 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 23

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-023.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained slag.



**DATE:** July 13, 2017

**TIME:** 9:35 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 24

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-024.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris not meeting the definition of  
CCDD as it contained slag, ceramic  
tile, and wood.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:36 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the north.

**PHOTOGRAPH NUMBER:** 25

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-025.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris not meeting the definition of CCDD as it contained slag, and wood.



**DATE:** July 13, 2017

**TIME:** 9:39 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the west.

**PHOTOGRAPH NUMBER:** 26

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-026.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts an overview of demolition debris along the Mackinaw River not meeting the definition of CCDD.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:40 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 27

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-027.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris along the Mackinaw River not meeting the definition of CCDD as it contained slag, brick, and wood.



**DATE:** July 13, 2017

**TIME:** 9:42 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the northwest.

**PHOTOGRAPH NUMBER:** 28

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-028.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris along the Mackinaw River not meeting the definition of CCDD as it contained brick and rebar.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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Venovich Construction Company  
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**DATE:** July 13, 2017

**TIME:** 9:43 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northwest.

**PHOTOGRAPH NUMBER:** 29

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-029.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris along the Mackinaw River  
not meeting the definition of CCDD  
as it contained painted concrete,  
brick, and wood.



**DATE:** July 13, 2017

**TIME:** 9:45 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 30

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-030.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris along the Mackinaw River  
not meeting the definition of CCDD  
as it contained rebar.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





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**DATE:** July 13, 2017

**TIME:** 9:49 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 31

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-031.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris along the Mackinaw River  
not meeting the definition of CCDD  
as it contained slag.



**DATE:** July 13, 2017

**TIME:** 9:49 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the east.

**PHOTOGRAPH NUMBER:** 32

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-032.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts an  
overview of demolition debris along  
the Mackinaw River not meeting  
the definition of CCDD.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





1798095013 -- Tazewell County  
Venovich Construction Company  
C-2017-080-P  
FOS

Site Photographs  
Page 17 of 23

**DATE:** July 13, 2017

**TIME:** 9:51 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 33

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-033.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris along the Mackinaw River  
not meeting the definition of CCDD  
as it contained rebar.



**DATE:** July 13, 2017

**TIME:** 9:52 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 34

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-034.jpg

**COMMENTS:** The digital  
photograph was collected at the  
disposal site and depicts demolition  
debris along the Mackinaw River  
not meeting the definition of CCDD  
as it contained painted concrete,  
brick, and rebar.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





1798095013 -- Tazewell County  
Venovich Construction Company  
C-2017-080-P  
FOS

Site Photographs  
Page 18 of 23

**DATE:** July 13, 2017

**TIME:** 9:53 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the north.

**PHOTOGRAPH NUMBER:** 35

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-035.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris along the Mackinaw River not meeting the definition of CCDD as it contained painted concrete.



**DATE:** July 13, 2017

**TIME:** 9:54 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the north.

**PHOTOGRAPH NUMBER:** 36

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-036.jpg

**COMMENTS:** The digital photograph was collected at the disposal site and depicts demolition debris along the Mackinaw River not meeting the definition of CCDD as it contained rebar.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





1798095013 -- Tazewell County  
Venovich Construction Company  
C-2017-080-P  
FOS

Site Photographs  
Page 19 of 23

**DATE:** July 13, 2017

**TIME:** 10:22 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the southwest.

**PHOTOGRAPH NUMBER:** 37

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-037.jpg

**COMMENTS:** The digital photograph was collected at the source site and depicts the River City Construction signage posted at the site entrance.



**DATE:** July 13, 2017

**TIME:** 10:23 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the north.

**PHOTOGRAPH NUMBER:** 38

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-038.jpg

**COMMENTS:** The digital photograph was collected at the source site and depicts the River City Construction signage posted at the construction trailer.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





1798095013 -- Tazewell County  
Venovich Construction Company  
C-2017-080-P  
FOS

Site Photographs  
Page 20 of 23

**DATE:** July 13, 2017

**TIME:** 11:00 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the south.

**PHOTOGRAPH NUMBER:** 39

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-039.jpg

**COMMENTS:** The digital  
photograph was collected at the  
source site and depicts demolition  
debris remaining on-site.



**DATE:** July 13, 2017

**TIME:** 11:00 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the southwest.

**PHOTOGRAPH NUMBER:** 40

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-040.jpg

**COMMENTS:** The digital  
photograph was collected at the  
source site and depicts demolition  
debris remaining on-site.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





1798095013 -- Tazewell County  
Venovich Construction Company  
C-2017-080-P  
FOS

Site Photographs  
Page 21 of 23

**DATE:** July 13, 2017

**TIME:** 11:02 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the south.

**PHOTOGRAPH NUMBER:** 41

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-041.jpg

**COMMENTS:** The digital  
photograph was collected at the  
source site and depicts demolition  
debris remaining on-site.



**DATE:** July 13, 2017

**TIME:** 11:02 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the south.

**PHOTOGRAPH NUMBER:** 42

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-042.jpg

**COMMENTS:** The digital  
photograph was collected at the  
source site and depicts a CAT 329D  
tracked excavator with IHX  
markings.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





1798095013 -- Tazewell County  
Venovich Construction Company  
C-2017-080-P  
FOS

Site Photographs  
Page 22 of 23

**DATE:** July 13, 2017

**TIME:** 11:04 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the southeast.

**PHOTOGRAPH NUMBER:** 43

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-043.jpg

**COMMENTS:** The digital photograph was collected at the source site and depicts demolition debris remaining on-site.



**DATE:** July 13, 2017

**TIME:** 11:04 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken toward the west.

**PHOTOGRAPH NUMBER:** 44

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-044.jpg

**COMMENTS:** The digital photograph was collected at the source site and depicts a CAT 330DL tracked excavator with IHX, Iron Hustler Excavating markings.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc





1798095013 -- Tazewell County  
Venovich Construction Company  
C-2017-080-P  
FOS

Site Photographs  
Page 23 of 23

**DATE:** July 13, 2017

**TIME:** 11:06 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the northeast.

**PHOTOGRAPH NUMBER:** 45

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-045.jpg

**COMMENTS:** The digital  
photograph was collected at the  
source site and depicts demolition  
debris remaining on-site.



**DATE:** July 13, 2017

**TIME:** 11:13 a.m.

**PHOTOGRAPHED BY:** J. Thorp

**DIRECTION:** Photograph taken  
toward the north.

**PHOTOGRAPH NUMBER:** 46

**PHOTOGRAPH FILE NAME:**  
1798095013~07132017-046.jpg

**COMMENTS:** The digital  
photograph was collected at the  
source site and depicts demolition  
debris remaining on-site.



**DOCUMENT FILE NAME:**  
1798095013~07132017.doc

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**PEOPLE OF THE STATE OF ILLINOIS,** )  
**by KWAME RAOUL, Attorney General** )  
**of the State of Illinois,** )  
) )  
**Complainant,** )  
) )  
**v.** )  
) )  
**IRONHUSTLER EXCAVATING, INC.,** )  
**an Illinois corporation, and** )  
**RIVER CITY CONSTRUCTION, LLC,** )  
**an Illinois limited liability company.** )  
) )  
**Respondents.** )

**PCB No. 20-16  
(Enforcement - Land)**

**AFFIDAVIT OF JASON THORP**

Upon penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109 (2018), JASON THORP certifies that he is employed by the Illinois Environmental Protection Agency (“Illinois EPA”); that he has direct and personal knowledge as to the open dumping of general construction and demolition debris at the Venovich Disposal Site, Hopedale Township, Tazewell County, Illinois; and the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters he verily believes the same to be true:

1. I am employed as an inspector for the Illinois EPA, Bureau of Land, Peoria Regional Office. I was so employed in 2017.

2. On July 13, 2017, myself and another Illinois EPA employee inspected the Venovich Disposal Site. Approximately 750 cubic yards of open dumped demolition debris was located at the end of King Road along the Mackinaw River. Some of the demolition debris was

located in water along the edge of the river.

3. The demolition debris contained electrical wire, metal radiators, wood, rebar, wire conduit, metal sheeting, metal angle iron, painted brick, plywood, metal studs, metal pipe, painted concrete, slag, and ceramic tile. A John Deere 650H dozer with Ironhustler markings was located at the Disposal Site. (See attached photo no. 20).

4. On July 13, 2017, we also inspected the Source Site in Delavan, Illinois. Demolition debris was present along with a Caterpillar 329D tracked excavator and a Caterpillar 330DL tracked excavator both with Ironhustler markings.

5. On November 16, 2017, I re-inspected the Disposal Site. The open dumped demolition debris had been removed. Copies of disposal receipts were submitted to Illinois EPA by Ironhustler documenting the disposal of 567.32 tons of demolition debris at the Indian Creek Landfill on July 17, 2017.

6. True and correct copies of the July 13, 2017 inspection photographs taken by me are attached to this Exhibit "A", as Attachment "1" - Photos. These photos accurately depict the Disposal and Source Sites as they appeared July 13, 2017.

  
\_\_\_\_\_  
JASON THORP

DATE: 03/23/2021

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB NO. 20-16
	)	(Enforcement – Land)
IRONHUSTLER EXCAVATING, INC., an Illinois	)	
Corporation, RIVER CITY CONSTRUCTION,	)	
LLC, an Illinois limited liability company, and	)	
VENOVICH CONSTRUCTION CO., an	)	
Illinois corporation,	)	
	)	
Respondents.	)	

**ANSWERS TO FIRST SET OF INTERROGATORIES  
FROM COMPLAINANT**

NOW COMES Respondent RIVER CITY CONSTRUCTION, LLC, an Illinois limited liability company, by its attorneys, QUINN, JOHNSTON, HENDERSON, PRETORIUS & CERULO, and in response to Complainant’s first set of interrogatories, states:

INTERROGATORY NO. 1: Please identify the person or persons providing information in answer to these Interrogatories on behalf of the Respondent.

**ANSWER: Cody Gerdes, Vice President, River City Construction, LLC**

INTERROGATORY NO. 2: Please identify all other persons (other than the persons referenced above) who have knowledge of the facts relating to the allegations in the Complaint.

**ANSWER: Kevin Beal, Tim DeHart, Jon Stegmaier, other currently unknown individuals employed by various subcontractors. Investigation Continues.**

INTERROGATORY NO. 3: Please identify each officer, manager, director and owner of your company and state each person's title and percentage of ownership.



**ANSWER: Objection as to relevance, interrogatory is unlikely to lead to relevant, admissible evidence.**

INTERROGATORY NO. 4: Did you, in connection with the allegations in the Complaint, retain the services of any consultants, engineers or contractors? If the answer is “yes,” please state:

- a. the name of the consultant, engineer or contractor and the date the consultant, engineer or contractor was retained;
- b. whether there is a written contract with the consultant, engineer or contractor; and
- c. the nature of the services to be rendered by the consultant, engineer or contractor.

**ANSWER: Not at this time.**

INTERROGATORY NO. 5: Please identify each of your site superintendents, foremen or other supervisors for the Delavan CUSD Project and describe the nature of their duties.

**ANSWER: Kevin Beal, Jon Stegmaier.**

INTERROGATORY NO. 6: Please identify all other employees of River City who worked on the Delavan CUSD Project and describe the nature of their duties.

**ANSWER: Objection as to relevance and overbroad nature of the request. See attached payroll for the project for the relevant time period, July 2017.**

INTERROGATORY NO. 7: Please state whether you had a written contract, agreement or scope of work statement with Delavan CUSD No. 703 concerning the Delavan CUSD Project and, if so, state the date of the agreement, the signatories to the agreement and the nature of River City's responsibilities pursuant to this agreement.

**ANSWER: Yes. River City, LLC was the General Contractor for the project. For full information, please see attached copy of the contract.**

INTERROGATORY NO. 8: Please state whether you had a written contract, agreement or scope of work statement with Ironhustler Excavating concerning the Delavan CUSD Project and, if so,

state the date of the agreement, the signatories to the agreement and the nature of Ironhustler Excavating's responsibilities pursuant to this agreement.

**ANSWER: Yes. Ironhustler was a subcontractor. For full information, please see attached copy of the subcontract.**

INTERROGATORY NO. 9: Please identify each person who supervised, or was personally involved in, actively participated in, or controlled the day-to-day operations of your company from January 1, 2017 through the present.

**ANSWER: Objection as to relevance and overbroad nature of the request. Cody Gerdes, Kevin Beal, and Jon Stegmaier were responsible for supervision and operations on this project.**

INTERROGATORY NO. 10: For each person identified in the interrogatory above, please state the duties they performed, the title of each such person, whether the person acted in a supervisory or management capacity, and the types of decisions or actions each such person made on a day-to-day basis in relation to your company.

**ANSWER: Cody Gerdes- Vice President of Project Management, general oversight.**

**Kevin Beal- Project Manager for the project at issue.**

**Jon Stegmaier- Superintendent for the project at issue.**

INTERROGATORY NO. 11: Please identify each person employed with your company with responsibility for making decisions regarding compliance with Federal, State, and/or local environmental and/or public health laws and regulations from January 1, 2017 through the present.

**ANSWER: Objection as to relevance and overbroad nature of request. Cody Gerdes, Kevin Beal, and Jon Stegmaier were the parties responsible for oversight on the project at issue, in the roles stated above.**

INTERROGATORY NO. 12: Please provide the name and address of each witness who will testify at the trial of this matter, including expert or opinion witnesses, as directed by Supreme Court Rule 213(f).

**ANSWER: Cody Gerdes, Kevin Beal, Jon Stegmaier**

**c/o Quinn, Johnston, Henderson, Pretorius & Cerulo**

**227 NE Jefferson, Peoria, IL 61602**

**Investigation Continues.**

RIVER CITY CONSTRUCTION, LLC,  
Respondent

By: /s/ Matthew A. Warner

Matthew A. Warner

QUINN, JOHNSTON, HENDERSON, PRETORIUS & CERULO

Matthew A. Warner (ARDC #6321689)

E-mail for service of pleadings: warnerpleadings@quinnjohnston.com

E-mail for correspondence: mwarner@quinnjohnston.com

QUINN, JOHNSTON, HENDERSON, PRETORIUS & CERULO

227 NE Jefferson Avenue

Peoria, IL 61602

(309) 674-1133

(309) 674-6503 (fax)

PROOF OF SERVICE

The undersigned certifies that on January 3, 2020, all counsel of record were served with a copy of the foregoing document via electronic mail in accordance with Supreme Court Rule 11.

/s/ Matthew A. Warner

Matthew A. Warner

Raymond J. Callery  
Assistant Attorney General  
500 S. Second Street  
Springfield, IL 62701  
217-782-9031  
*rcallery@atg.state.il.us*  
*ebs@atg.state.il.us*

Carol Webb  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274  
*Carol.Webb@illinois.gov*  
*Hearing Officer*

Jay H. Scholl  
Davis & Campbell L.L.C.  
401 Main Street, Suite 1600  
Peoria, IL 61602  
*jhscholl@dcamplaw.com*

**Served to the following via Regular US Mail Delivery:**

Venovich Construction Company  
c/o Joseph L. Venovich, Jr., Registered Agent  
207 S. Sampton Street  
P.O. Box 410  
Tremont, IL 61568

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB 20-16</b>
	)	<b>(Enforcement – Land)</b>
	)	
<b>IRONHUSTLER EXCAVATING, INC., an</b>	)	
<b>Illinois corporation, RIVER CITY</b>	)	
<b>CONSTRUCTION, LLC, an Illinois limited</b>	)	
<b>liability company, and VENOVICH</b>	)	
<b>CONSTRUCTION CO., an Illinois corporation,</b>	)	
	)	
<b>Respondents.</b>	)	

**ANSWER TO  
COMPLAINANT’S FIRST SET OF INTERROGATORIES  
TO IRONHUSTLER EXCAVATING, INC.**

NOW COMES the Respondent, IRONHUSTLER EXCAVATING, INC., an Illinois corporation, by its attorney Jay H. Scholl of Davis & Campbell L.L.C., and answers the “Complainant’s First Set of Interrogatories to IronHustler Excavating, Inc.” served by the Complainant, PEOPLE OF THE STATE OF ILLINOIS, as follows:

1. Please identify the person or persons providing information in answer to these Interrogatories on behalf of the Respondent.

**ANSWER: David G. Schielein, President of IronHustler Excavating, Inc., whose address is 1604 W Detweiller Dr., Peoria, IL 61615.**

2. Please identify all other persons (other than the persons referenced above) who have knowledge of the facts relating to the allegations in the Complaint.

**ANSWER: Rob Frederick, Project Manager for IronHustler Excavating, Inc., whose address is 1604 W Detweiller Dr., Peoria, IL 61615;**

**Tim DeHart, former Superintendent for IronHustler Excavating, Inc. (no longer employed by IronHustler Excavating, Inc.), whose current address is unknown;**



**Joseph Venovich, President of Venovich Construction Co., whose address is 2646 Bedford Ave., Tremont, IL 61568; and**

**Various drivers identified in the hourly invoices and hourly time sheets produced between Bates No. IHX-000025 to IHX-000263, whose addresses are unknown.**

3. Please identify each officer, manager, director and owner of your company and state each person's title and percentage of ownership.

**ANSWER: Respondent objects to this Interrogatory, as it requests information that is not likely to lead to the discovery of relevant information. Without waiving said objection, David G. Schielein is the sole shareholder, sole Director, and President/Secretary/Treasurer, and Rob Frederick is the Vice President.**

4. Did you, in connection with the allegations in the Complaint, retain the services of any consultants, engineers or contractors? If the answer is "yes," please state:

- a. the name of the consultant, engineer or contractor and the date the consultant, engineer or contractor was retained;
- b. whether there is a written contract with the consultant, engineer or contractor; and
- c. the nature of the services to be rendered by the consultant, engineer or contractor.

**ANSWER: Yes, Robert E. Kennel Trucking, Inc., whose mailing address is P.O. Box 830, Metamora, IL 61548, was retained to haul debris from the Delavan CUSD Project to the Tazewell County Landfill. There is no written contract between IronHustler Excavating, Inc. and Robert E. Kennel Trucking, Inc. with respect to the hauling performed from the Delavan CUSD Project.**

5. Please identify each of your supervisors or foremen for the Delavan CUSD Project and describe the nature of their duties.

**ANSWER: Rob Frederick and Tim DeHart, whose roles and addresses, to the extent known, are identified in the Answer to Interrogatory No. 2.**

6. Please identify all other employees, officers or owners of IRONHUSTLER (other than the persons referenced above) who worked on the Delavan CUSD Project and describe the nature of their duties.

**ANSWER: Respondent objects to this Interrogatory, as it requests information that is not likely to lead to the discovery of relevant information. Without waiving said objection, see the employees identified on the time cards produced as Bates No. IHX-000021 to IHX-000024.**

7. Please identify all sites to which General Construction or Demolition Debris from the Delavan CUSD Project was taken.

**ANSWER: See the sites identified on the hourly time cards produced between Bates No. IHX-000025 to IHX-000263.**

8. Please identify each employee, officer or owner of IRONHUSTLER who was involved in any way with the Disposal of General Construction or Demolition Debris on the Venovich Property.

**ANSWER: Tim DeHart, whose role and address, to the extent known, is identified in the Answer to Interrogatory No. 2.**

9. Please identify each person who operated the Ironhustler John Deere 650H dozer which was observed at the Venovich Property on July 13, 2017 (as shown in Illinois EPA inspection photo no. 07132017-20) and state when and how the Ironhustler John Deere 650H dozer was transported to the Venovich Property.

**ANSWER: On information and belief, the dozer would have been operated by Corey Miller, Operator for IronHustler Excavating, Inc. (no longer employed by IronHustler Excavating, Inc.), whose current address is unknown. On information and belief, the dozer would have been transported by Jim Fitz, Truck Driver for IronHustler Excavating, Inc. (no longer employed by IronHustler Excavating, Inc.), whose current address is unknown.**

10. Please identify any employee of IRONHUSTLER who was disciplined in connection with the Delavan CUSD Project and describe the nature of the discipline.

**ANSWER: Tim DeHart's employment with IronHustler Excavating, Inc. was terminated.**

11. If any person other than an employee, officer or owner of IRONHUSTLER was involved in the Disposal of General Construction or Demolition Debris on the Venovich Property, please identify each such person and describe the nature of their involvement.

**ANSWER: On information and belief, Joseph Venovich, whose role and address, to the extent known, is identified in the Answer to Interrogatory No. 2. On information and belief, Mr. Venovich requested the materials and represented that he had an IEPA permit to utilize the materials to build a berm to be covered with dirt and seed for erosion and/or flood control.**

12. Please state whether you had a written contract, agreement or scope of work statement with RIVER CITY CONSTRUCTION, LLC or any other person or entity concerning the Delavan CUSD Project and, if so, state the date of the agreement, the signatories to the agreement and the nature of Ironhustler Excavating's responsibilities pursuant to these agreements.

**ANSWER: Yes. See the Contract for Building Construction dated June 28, 2016, produced as Bates Nos. IHX-000001 to IHX-000020.**

13. Please identify each person who supervised, or was personally involved in, actively participated in, or controlled the day-to-day operations of your company from January 1, 2017 through the present.

**ANSWER: Respondent objects to this Interrogatory, as it requests information that is not likely to lead to the discovery of relevant information. Without waiving said objection, see the officers identified in the Answer to Interrogatory No. 3.**

14. For each person identified in the interrogatory above, please state the duties they performed, the title of each such person, whether the person acted in a supervisory or management capacity, and the types of decisions or actions each such person made on a day-to-day basis in relation to your company.

**ANSWER: Respondent objects to this Interrogatory, as it requests information that is not likely to lead to the discovery of relevant information. Without waiving said**

**objection, the officers of IronHuster Excavating, Inc. perform the duties required under the Illinois Business Corporation Act of 1983**


15. Please identify each person employed with your company with responsibility for making decisions regarding compliance with Federal, State, and/or local environmental and/or public health laws and regulations from January 1, 2017 through the present.

**ANSWER: Respondent objects to this Interrogatory, as it requests information that is not likely to lead to the discovery of relevant information. Without waiving said objection, see the employees of IronHustler Excavating, Inc. identified in the Answer to Interrogatory No. 2.**

16. Please provide the name and address of each witness who will testify at the trial of this matter, including expert or opinion witnesses, as directed by Supreme Court Rule 213(f).

**ANSWER: David G. Schielein and Rob Frederick, whose addresses are identified in the Answer to Interrogatory No. 2. IronHustler Excavating, Inc. reserves its right to supplement this Answer to the extent additional witnesses are identified.**

IRONHUSTLER EXCAVATING, INC.  
An Illinois corporation, Respondent

By:   
One of Its Attorneys


Jay H. Scholl, ARDC # 6297558  
DAVIS & CAMPBELL L.L.C.  
401 Main Street, Suite 1600  
Peoria, IL 61602  
Tel: (309) 673-1681  
Fax: (309) 673-1690  
[jhscholl@dcamplaw.com](mailto:jhscholl@dcamplaw.com)  
00247443.DOCX

**ATTESTATION**

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF PEORIA        )

David G. Schielein, as President of IronHustler Excavating, Inc., being first duly sworn on oath, deposes and states that he has read the foregoing Answer to Complainant's First Set of Interrogatories to IronHustler Excavating, Inc.; and the answers made therein are true, correct, and complete to the best of his knowledge and belief.

IRONHUSTLER EXCAVATING, INC.

By:   
David G. Schielein, President

SUBSCRIBED and SWORN to before me this

7<sup>th</sup> day of Jan., 2020.

  
NOTARY PUBLIC



**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served on January 7, 2020, the attached Answer to Complainant's First Set of Interrogatories to IronHustler Excavating, Inc. upon the following persons by email:

Raymond J. Callery  
Office of the Attorney General  
500 South Second Street  
Springfield, IL 62701  
[rcallery@atg.state.il.us](mailto:rcallery@atg.state.il.us)  
*Assistant Attorney General*

Carol Webb  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274  
[Carol.Webb@illinois.gov](mailto:Carol.Webb@illinois.gov)  
*Hearing Officer*

Kenneth Eathington  
Quinn, Johnston, Henderson  
Pretorius & Cerulo  
227 N.E. Jefferson Street  
Peoria, IL 61602  
[keathington@quinnjohnston.com](mailto:keathington@quinnjohnston.com)  
*Attorney for River City  
Construction, LLC*

Furthermore, I, the undersigned, certify that I have served on January 7, 2020, the attached Answer to Complainant's First Set of Interrogatories to IronHustler Excavating, Inc. upon the following persons by depositing the document in a U.S. Postal Service mailbox by the time of 5:00 P.M., with proper postage or delivery charges prepaid:

Venovich Construction Company  
c/o Joseph L. Venovich, Jr., Registered Agent  
207 South Sampton Street  
P.O. Box 410  
Tremont, IL 61568



A handwritten signature in blue ink is positioned above a solid horizontal line. The signature is stylized and appears to read "J. Scholl".

Jay H. Scholl, ARDC # 6297558  
DAVIS & CAMPBELL L.L.C.  
401 Main Street, Suite 1600  
Peoria, IL 61602  
Tel: (309) 673-1681  
Fax: (309) 673-1690  
[jhscholl@dcamlaw.com](mailto:jhscholl@dcamlaw.com)

 **AIA**<sup>®</sup> Document A101<sup>™</sup> – 2007

**Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the Twenty-Sixth day of February in the year Two Thousand and Sixteen  
*(In words, indicate day, month and year)*

**BETWEEN** the Owner:  
*(Name, address and other information)*

Delavan CUSD #703  
907 Locust Street  
Delavan, IL 61734

and the Contractor:  
*(Name, address and other information)*

River City Construction, L.L.C.  
101 Hoffer Lane  
East Peoria, IL 61611

for the following Project:  
*(Name, location, and detailed description)*

**New High School**  
Delavan CUSD #703

The project consists of a two story new high school with gymnasium, science classrooms and lab, family consumer science classroom and general classrooms (approximately 25,000 s.f.). The scope includes heating and ventilating, plumbing, electrical, fire protection, and site work as required for site utilities, drives and sidewalks. The existing high school building is to be demolished after new construction.

The Architect:  
*(Name, address and other information)*

BLDD Architects, Inc.  
201 E. Grove Street, Suite 300  
Bloomington, IL 61701

BLDD Project No.: 142EX27.400

The Owner and Contractor agree as follows.

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

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be the date of this Agreement  
(Paragraphs deleted)

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

N/A

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 4:00 p.m. on August 11, 2017.

(Table deleted)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Init.

N/A

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Five Million, Eight Hundred Eighteen Thousand Dollars (\$ 5,818,000 ), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

N/A

§ 4.3 Unit prices, if any: N/A  
*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*

*(Table deleted)*

§ 4.4 Allowances included in the Contract Sum, if any: N/A  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price
For use by General Contractor to provide all ISBE Called Inspections as required in Section 01 4001. General Contractor to obtain written instruction from Owner/ Architect prior to using Allowance. At Project closeout, credit unused amounts remaining in the allowance to Owner by Change Order.	\$20,000

**ARTICLE 5 PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the second Wednesday of the month, the Owner shall make payment of the certified amount to the Contractor not later than the Wednesday following the fourth Monday of the month.  
*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

Init.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten Percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten Percent ( 10% );
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

10% retainage to be held until work reaches 50% complete, at that time retainage balance can start to decline down to 5%

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*



**§ 6.2 BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other *(Specify)*

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

12% per annum

**§ 8.3** The Owner's representative:  
*(Name, address and other information)*

Dr. Andrew Brooks  
Delavan CUSD #703  
907 Locust Street  
Delavan, IL 61734

**§ 8.4** The Contractor's representative:  
*(Name, address and other information)*

Eric Bursott  
River City Construction, L.L.C.  
101 Hoffer Lane  
East Peoria, IL 61611

Inlt.

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

N/A

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
00 7300	Supplementary Conditions (A201)	11 January 2016	7

§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Exhibit A

(Table deleted)

§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: Exhibit B

(Table deleted)

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
00 9101	29 January 2016	2 pgs. w/ 1 attachment
00 9102	5 February 2016	7 pgs. w/ 16 attachments
00 9103	10 February 2016	5 pgs. w/ 1 attachment
00 9104	12 February 2016	9 pgs. w/ 2 attachments

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

Exhibit A: List of Specifications

Exhibit B: List of Drawings

(Paragraphs deleted)

**ARTICLE 10 INSURANCE AND BONDS**

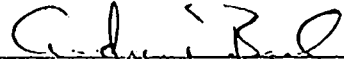
The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond  
Per Construction Documents


Limit of liability or bond amount (\$ 0.00)  
Per Construction Documents

This Agreement entered into as of the day and year first written above.

  
OWNER (Signature)

Andrew Brooks, Superintendent  
(Printed name and title)

(Date) 4-6-16

  
CONTRACTOR (Signature)

JOHN SUTHERLAND VICE PRESIDENT  
(Printed name and title)

(Date) 3/14/16

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 **AIA<sup>®</sup> Document A201<sup>™</sup> – 2007**

**General Conditions of the Contract for Construction**

for the following PROJECT:  
(Name and location or address)

THE OWNER:  
(Name and address)

THE ARCHITECT:  
(Name and address)

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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

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**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1 BASIC DEFINITIONS**

**§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

**§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

**§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

**§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

**§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

**§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

**§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

**§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

**ARTICLE 2 OWNER**

**§ 2.1 GENERAL**

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

**§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

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portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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**§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.4 LABOR AND MATERIALS**

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

Init.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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**§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

**§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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**§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and

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completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

**§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

**§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

**§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

**§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

**§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### ARTICLE 4 ARCHITECT

##### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

##### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

##### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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**SUBCONTRACT FOR BUILDING CONSTRUCTION**

RIVER CITY CONSTRUCTION LLC

ARTICLE 1  
AGREEMENT

This Agreement made on June 28, 2016 and effective June 28, 2016, by and between River City Construction, L.L.C. hereinafter called the Contractor and Iron Hustler Excavating hereinafter called the Subcontractor, to perform part of the Work on the following project.

PROJECT: Delavan High School

OWNER: Delavan CUSD #703  
907 Locust Street  
Delavan, IL 61734

ARCHITECT: Bldd Architects  
100 Merchant St Suite 200  
Decatur, IL 62523

CONTRACTOR: River City Construction, L.L.C.  
101 Hoffer Lane  
East Peoria, IL 61611

SUBCONTRACTOR: Iron Hustler Excavating  
Po Box 120026  
Peoria, IL 61614

CONTRACT PRICE: \$373,439.00

JOB NUMBER: 162200.

VENDOR NUMBER: 14952

SUBCONTRACT NUMBER: 1622000003

Notice to the parties shall be given at the above address.

ARTICLE 2  
SCOPE OF WORK

2.1 SUBCONTRACTOR'S WORK. The contractor employs the Subcontractor as an independent contractor, to perform the work described in Article 16. The Subcontractor shall perform such work (hereinafter called the "Subcontractor's Work") under the general direction of the Contractor and in accordance with this Agreement and the Contract Documents.

2.2 CONTRACT DOCUMENTS. The Contract Documents, which are binding on the Subcontractor, are as set forth in Article 16.5. Upon the Subcontractor's request the Contractor shall furnish a copy of any part of these documents.

ARTICLE 3  
SCHEDULE OF WORK

3.1 TIME IS OF ESSENCE. Time is of the essence for both parties, and they mutually agree to see to the performance of their respective work and the work of their subcontractors so that the entire project may be complete in accordance with the Contract Documents and the Schedule of Work. The Contractor shall prepare the Schedule of Work and revise such schedule as the work progress.

3.2 DUTY TO BE BOUND. Both the Contractor and the Subcontractor shall be bound by the Schedule of Work. The Subcontractor shall provide the Contractor with any requested scheduling information for the Subcontractor's Work. The Schedule of Work and all subsequent changes therein shall be submitted to the Subcontractor in advance of the required performance. Should the progress of the work or of the project be delayed by any fault, neglect, or failure to act of Subcontractor so as to cause any additional cost, expense, liability or damage to Contractor or Owner, Subcontractor agrees to compensate Contractor or Owner for and indemnify them against all costs, expenses, damages and liability.

3.3 SCHEDULE CHANGES. Contractor reserves the right to modify the Schedule of Work with respect to the required sequence or duration of the Work or any portion thereof, and Contractor makes no representation that Subcontractor will be able to commence, prosecute, or complete Subcontractor's Work in accordance with the original Schedule of Work or any revision thereto.

3.4 PRIORITY OF WORK. The Contractor shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work.

The Subcontractor shall commence its work within three (3) working days of notice to proceed from the Contractor and if such work is interrupted for any reason the Subcontractor shall resume such work within three (3) working days from the Contractor's notice to do so.

ARTICLE 4  
CONTRACT PRICE

The Contractor agrees to pay to the Subcontractor for the satisfactory performance of the Subcontractor's Work the sum of Three Hundred Seventy-Three Thousand Four Hundred Thirty-Nine Dollars and 00/100<sup>ths</sup> (\$373,439.00) in accordance with Article 5, subject to additions or deductions per Article 6 and to the conditions of Article 16.2.

ARTICLE 5  
PAYMENT

5.1 GENERAL PROVISIONS

5.1.1 SCHEDULE OF VALUES. The Subcontractor shall provide a schedule of values satisfactory to the Contractor and the Owner no more than ten (10) days from the date of execution of this Agreement.

5.1.2 ARCHITECT VERIFICATION. Upon request the Contractor shall give the Subcontractor written authorization to obtain directly from the Architect the percentage of completion certified for the Subcontractor's Work.

5.1.3 PAYMENT USE VERIFICATION. The Contractor shall have the right at all times to contact the Subcontractor's subcontractors and suppliers to ensure that the same are being paid by the Subcontractor for labor or materials furnished for use in performing the Subcontractor's Work.

5.1.4 PARTIAL LIEN WAIVERS AND AFFIDAVITS. When required by the Contractor, and as a prerequisite for payment, the Subcontractor shall provide, in a form satisfactory to the Owner and the Contractor, partial lien or claim waivers and affidavits from the Subcontractor, and its sub-subcontractors and suppliers for the completed Subcontractor's Work. Such waivers may be made conditional upon payment.

5.1.5 SUBCONTRACTOR PAYMENT FAILURE. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being paid, the Contractor shall give written notice of such claim or lien to the Subcontractor and may take any steps deemed necessary to insure that any progress payment shall be utilized to pay such obligations.

If upon receipt of said notice, the Subcontractor does not:

(a) Supply evidence to the satisfaction of the Contractor that the monies owing to the claimant have been paid; or

(b) Post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from such claim or lien; then the Contractor shall have the right to retain out of any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorney's fees arising out of or relating to any such claim or lien until the claim or lien has been satisfied by the Subcontractor.

5.1.6 PAYMENT NOT ACCEPTANCE. Payment to the Subcontractor is specifically agreed not to constitute or imply acceptance by the Contractor or the Owner of any portion of the Subcontractor's Work.

5.2 PROGRESS PAYMENTS

5.2.1 APPLICATION. The Subcontractor's progress payment application for work performed in the preceding payment period shall be submitted to the Contractor per the terms of this Agreement and specifically Articles 5.1.1, 5.2.2, 5.2.3, and 5.2.4 for approval of the Contractor and the Contractor shall forward, without delay, the approved value to the Owner for payment.

5.2.2 RETAINAGE/SECURITY. The rate of retainage shall not exceed the percentage retained from the Contractor's payment by the Owner for the Subcontractor's Work.

If the Subcontractor has furnished a bond or security, its work is satisfactory and the Contract Documents provide for reduction of



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retainage at a specified percentage of completion, the Subcontractor's retainage shall also be reduced when the Subcontractor's Work has attained the same percentage of completion and the Contractor's retainage for the Subcontractor's Work has been so reduced by the Owner.

5.2.3 TIME OF APPLICATION. The Subcontractor shall submit progress payment applications to the Contractor no later than the 25th day of each payment period for work performed up to and including the 31st day of the payment period indicating work completed and, to the extent allowed under Article 5.2.4, materials suitably stored during the preceding payment period.

5.2.4 STORED MATERIALS. Unless otherwise provided in the Contract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontractor's Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Approval of payment application for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and Contractor's interests therein, including transportation to the site or a material bond covering 100% value of the material stored off site.

5.2.5 PAYMENT FAILURE. If for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within seven (7) days after receipt by the Contractor of payment from the Owner for such Subcontractor's work, then the Subcontractor, upon giving an additional seven (7) days' written notice to the Contractor, and without prejudice to and in addition to any of his other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. To the extent obtained by the Contractor under the Contract Documents, or if the nonpayment is the fault of the Contractor, the contract sum shall be increased by the amount of the Subcontractor's reasonable costs of shutdown, delay, and startup, which shall be effected by appropriate Change Order.

If the Subcontractor's Work has been stopped for thirty (30) days because the Subcontractor has not received progress payments as required hereunder, the Subcontractor may terminate this Agreement upon giving the Contractor an Additional seven (7) days' written notice.

### 5.3 FINAL PAYMENT

5.3.1 APPLICATION. Upon acceptance of the Subcontractor's Work by the Owner, the Contractor, and if necessary, the Architect, and upon the Subcontractor furnishing evidence of fulfillment of the Subcontractor's obligations in accordance with the Contract Documents and Article 5.3.2, the Contractor shall forward the Subcontractor's application for final payment without delay.

5.3.2 REQUIREMENTS. Before the Contractor shall be required to forward the Subcontractor's application for final payment to the Owner, the Subcontractor shall submit to the Contractor:

(a) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontractor's Work for which the owner or his property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;

(b) Consent of surety to final payment, if required;

(c) Satisfaction of required closeout procedures; and

(d) Other data if required by the Contractor or Owner, such as warranties, receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner. Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontractor's Work except those identified in writing as unsettled by the time of the Subcontractor's application for final payment, but shall in no way relieve the Subcontractor of liability for the obligations assumed under Article 9.9 hereof, or for faulty or defective work appearing after final payment.

5.3.3 TIME OF PAYMENT. Final payment of the balance due of the contract price shall be made to the Subcontractor within Seven (7) days after receipt by the Contractor of final payment from the Owner for such Subcontractor's Work. If the Owner or his designated agent does not issue a Certificate for Payment or the Contractor does not receive payment for any cause, which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontractor's work.

5.4 LATE PAYMENT INTEREST. To the extent obtained by the Contractor under the Contract Documents, progress payments or final payment due and unpaid under this Agreement shall bear interest from the date payment is due at the rate provided in the Contract Documents, or, in the absence thereof, at the legal rate prevailing at the place of the Project.

ARTICLE 6  
CHANGES, CLAIMS AND DELAYS

6.1 CHANGES. When the Contractor so orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Work, which are within the general scope of this Agreement.

Adjustments in the contract price or contract time, if any, resulting from such changes shall be set forth in a Subcontract Change Order pursuant to the Contract Documents.

No such adjustment shall be made for any such changes performed by the Subcontractor that have not been so ordered by the Contractor.

6.2 Subcontractor Claims for Adjustments in the Contract Price or Contract Time. The Subcontractor shall give the Contractor written notice of all claims for adjustments of the contract price or the contract time within a reasonable time after the event or condition giving rise to the claim. The Subcontractor agrees to make all claims for which the Owner is or may be liable in the manner provided in the Contract Documents for like claims by the Contractor upon the owner. Notwithstanding any other provision of this Agreement or the Contract Documents, Subcontractor waives and releases any claim for an adjustment in the contract price, additional compensation for extra work, changed conditions, damages for delay or other causes, or an extension of the contract time unless the Subcontractor gives written notice of such claim to the Contractor within 60 days after the first occurrence of the event or condition which gives rise to the claim. Subcontractor further agrees to provide to the Contractor within 30 days of the Contractor's request all of the Subcontractor's backup documentation supporting the claims. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor shall be resolved in the manner provided in Article 14 herein.

6.3 DELAY. If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Change Order to the extent obtained by the Contractor under the Contract Documents and the Schedule of Work shall be revised accordingly.

The Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of delays caused by any person not a party to this Agreement unless the Contractor has first recovered the same on behalf of the Subcontractor from said person, it being understood and agreed by the Subcontractor that, apart from recovery from said person, the Subcontractor's sole and exclusive remedy for delay shall be an extension in the time for performance of the Subcontractor's Work.

6.4 LIQUIDATED DAMAGES. If the Contract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Contract Documents, and are so assessed, then the Contractor may assess same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay. However the amount of such assessment shall not exceed the amount assessed against the Contractor.

ARTICLE 7  
CONTRACTOR'S OBLIGATIONS

7.1 OBLIGATIONS DERIVATIVE. The Contractor binds itself to the Subcontractor under this Agreement in the same manner as the Owner is bound to the Contractor under the Contract Documents.

7.2 AUTHORIZED REPRESENTATIVE. The Contractor shall designate one or more persons who shall be the Contractor's authorized representative(s) a) on-site and b) off-site. Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

7.3 STORAGE ALLOCATION. The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontractor's Work.

7.4 NON-CONTRACTED SERVICES. The Contractor agrees that no claim for payment for services rendered or materials and equipment furnished by the Contractor to the Subcontractor shall be valid without prior notice to the Subcontractor, except in an emergency affecting the safety of persons or property, and unless written notice thereof is given by the Contractor during the first ten days of the calendar month following that in which the claim originated.

ARTICLE 8  
SUBCONTRACTOR'S OBLIGATIONS

8.1 OBLIGATIONS DERIVATIVE. The Subcontractor binds itself to the Contractor under this Agreement in the same manner as the Contractor is bound to the Owner under the Contract Documents.

8.2 RESPONSIBILITIES. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to,

competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontractor's Work.

The Subcontractor shall provide a list of proposed sub-subcontractors, and suppliers, be responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work.

8.3 TEMPORARY SERVICES. The Subcontractor shall furnish all temporary services and/or facilities necessary to perform its work, except as provided in Article 16. Said article also identifies those common temporary services (if any), which are to be furnished by this subcontractor.

8.4 COORDINATION. The Subcontractor shall:

(a) Cooperate with the Contractor and all others whose work may interfere with the Subcontractor's Work.

(b) Specifically note and immediately advise the Contractor of any such interference with the Subcontractor's Work; and

(c) Participate in the preparation of coordination drawings and work schedules in areas of congestion.

8.5 AUTHORIZED REPRESENTATIVE. The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s) a) on-site and b) off-site. Such authorized representative(s) shall be the only person(s) to whom the Contractor shall issue instructions, orders or directions, except in an emergency.

8.6 PROVISION FOR INSPECTION. The Subcontractor shall notify the contractor when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish the Contractor and its representative adequate facilities for inspecting materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. The Subcontractor shall furnish to the Contractor in such detail and as often as required, full reports of the progress of the Subcontractor's Work irrespective of the location of such work.

8.7 SAFETY AND CLEANUP. The Subcontractor shall follow the Contractor's clean-up and safety directions, and

(a) At all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and

(b) Remove Subcontractor's debris from the work site and shall leave the area of Subcontractor's work "broom clean" upon completion of his portion of the work.

If the Subcontractor fails to immediately commence compliance with such safety duties or commence clean-up duties within 24 hours after receipt from the Contractor of written notice of noncompliance, the Contractor may implement such safety or cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor.

8.8 PROTECTION OF THE WORK. The Subcontractor shall take necessary precautions to properly protect the Subcontractor's Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may so remedy and deduct the cost thereof from any amounts due or to become due the Subcontractor.

8.9 PERMITS, FEES AND LICENSES. The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Subcontractor's Work in accordance with the Contract Documents.

To the extent obtained by the Contractor under the Contract Documents, the Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules regulations and taxes enacted after the date of the Agreement.

8.10 1 ASSIGNMENT. The Subcontractor shall not assign this Agreement nor its proceeds nor subcontract the whole nor any part of the Subcontractor's Work without prior written approval of the Contractor, which shall not be unreasonably withheld.

8.11 NON-CONTRACTED SERVICES. The Subcontractor agrees that no claim for payment for services rendered or materials and equipment furnished by the Subcontractor to the Contractor shall be valid without prior notice to the Contractor, except in an emergency affecting the safety of persons or property, and unless written notice thereof is given by the Subcontractor during the first ten days of the calendar month following that in which the claim originated.

ARTICLE 9  
SUBCONTRACTOR PROVISIONS

9.1 LAYOUT RESPONSIBILITY AND LEVELS. The Contractor shall establish principal axis lines of the building and site whereupon the



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Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to set out or perform its work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

9.2 WORKMANSHIP. Every part of the Subcontractor's Work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

9.3 MATERIALS FURNISHED BY OTHERS. In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the Items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damages due to acts of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

9.4 SUBSTITUTIONS. No substitutions shall be made in the Subcontractor's Work unless permitted in the Contract Documents and only then upon the Subcontractor first receiving all approvals required under the Contract Documents for substitutions. The Subcontractor shall indemnify the Contractor for any increased costs incurred by the Contractor as a result of such substitutions, whether or not the Subcontractor has obtained approval thereof.

9.5 USE OF CONTRACTOR'S EQUIPMENT. The Subcontractor, its agents, employees, subcontractors or suppliers shall not use the Contractor's equipment without the express written permission of the Contractor's designated representative.

If the Subcontractor or any of its agents, employees, suppliers or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of the Contractor, the Subcontractor shall be liable to the Contractor as provided in Article 12 for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely to the negligence of the Contractor's employees operating such equipment.

9.6 CONTRACT BOND REVIEW. The Contractor's Payment Bond for the Project, if any, may be reviewed and copied by the Subcontractor.

9.7 OWNER ABILITY TO PAY. The Subcontractor shall have the right to receive from the Contractor Information relative to the Owner's financial ability to pay for the work.

9.8 SUBCONTRACTOR BOND. If a Performance and Payment Bond is required of the Subcontractor under Article 16, then within the duration of this Agreement, the Contractor may require such bonds and the Subcontractor shall provide same.

Said bonds shall be in the full amount of this Agreement in a form and by a surety satisfactory to the Contractor.

The Subcontractor shall be reimbursed for cost of same simultaneously with the first progress payment hereunder.

In the event the Subcontractor shall fail to promptly provide such requested bonds, the Contractor may terminate this Agreement and re-let the work to another Subcontractor and all Contractor costs and expenses incurred thereby shall be paid by the Subcontractor.

9.9 WARRANTY. The Subcontractor warrants its work against all deficiencies and defects in materials and/or workmanship and as called for in the Contract Documents.

The Subcontractor agrees to satisfy such warranty obligations, which appear within the guarantee or warranty period established in the Contract Documents without cost to the Owner or the Contractor.

If no guarantee or warranty is required of the Contractor in the Contract Documents, then the Subcontractor shall guarantee or warranty its work as described above for the period of one year from the date(s) of substantial completion of all or a designated portion of the Subcontractor's Work or acceptance or use by the Contractor or Owner of designated equipment, whichever is sooner.

The Subcontractor further agrees to execute any special guarantees or warranties that are required by the Contract Documents for the Subcontractor's Work prior to final payment.

### ARTICLE 10 RECOURSE BY CONTRACTOR

#### 10.1 FAILURE OF PERFORMANCE

10.1.1 NOTICE TO CURE. If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or it fails to make prompt payment for its workers, sub-subcontractors or suppliers, disregards laws, ordinances, rules,

regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, and fails within three (3) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies;

(a) Supply such number of workers quantity of materials, equipment and other facilities as the Contractor deems necessary for the completion of the Subcontractor's Work, or any part thereof which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorney's fees;

(b) Contract with one or more additional contractors to perform such part of the Subcontractor's Work as the Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to the Subcontractor;

(c) Withhold payment of any monies due the Subcontractor pending corrective action to the extent required by and to the satisfaction of the Contractor;

(d) In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice.

10.1.2 TERMINATION BY CONTRACTOR. If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) working days after receipt by the Contractor of the notice issued under Article 10.1.1, then the Contractor may, in lieu of or in addition to Article 10.1.1, issue a second written notice, by certified mail, to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) working days after receipt by the Subcontractor of the notice, the Contractor may terminate this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to the Subcontractor to complete the Subcontractors' Work. The Contractor also may furnish those materials, equipment and/or employ such workers or Subcontractors, as the Contractor deems necessary to maintain the orderly progress of the Work.

All of the costs incurred by the Contractor in so performing the Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the subcontract price.

10.1.3 USE OF SUBCONTRACTOR'S EQUIPMENT. If the Contractor performs work under this Article or sublets such work to be so performed, the Contractor and/or the persons to whom work has been sublet shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, belonging or delivered to the Subcontractor and located at the Project.

## 10.2 BANKRUPTCY

10.2.1 TERMINATION ABSENT CURE. Upon the appointment of a receiver for the Subcontractor or upon the Subcontractor making assignment for the benefit of creditors, the Contractor may terminate this Agreement upon giving three (3) working days written notice, by certified mail, to the Subcontractor and its surety, if any. If an order for relief is entered under the bankruptcy code with respect to the Subcontractor, the Contractor may terminate this Agreement by giving three (3) working days written notice, by certified mail, to the Subcontractor, its trustee, and its surety, if any, unless the Subcontractor, the surety, or the trustee:

(a) Promptly cures all defaults;

(b) Provides adequate assurances of future performance;

(c) Compensates the Contractor for actual pecuniary loss resulting from such defaults; and

(d) Assumes the obligations of the Subcontractor within the statutory time limits.

10.2.2 INTERIM REMEDIES. If the Subcontractor is not performing in accordance with the Schedule of Work at the time of entering an order for relief, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work.

The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees.

The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the contract price.

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10.3 SUSPENSION BY OWNER. Should the Owner suspend the Prime Contract or any part of the Prime Contract, which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing, and upon receipt of said notice the Subcontractor shall immediately suspend the Subcontractor's Work.

In the event of such Owner suspension, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension.

10.4 TERMINATION BY OWNER. Should the Owner terminate the Prime Contract or any part of the Prime Contract, which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing, and upon receipt of said notice, this Agreement shall also be terminated and the Subcontractor shall immediately stop the Subcontractor's Work. In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents.

The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination.

10.5 TERMINATION FOR CONVENIENCE. The Contractor may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. The Subcontractor shall notify the Contractor in writing within ten (10) working days after receipt of the Contractor's order of the effect of such order upon the Subcontractor's Work, and the contract price or contract time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension, delay, or interruption.

No claim under this Article shall be allowed for any costs incurred more than ten (10) working days prior to the Subcontractor's notice to the Contractor.

Neither the contract price nor the contract time shall be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of the Subcontractor.

10.6 WRONGFUL EXERCISE. If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit, less prior payments made, and attorney's fees.

10.7 LIENS/NON-PAYMENT OF SUPPLIERS. Notwithstanding any other provision of this Agreement, if any claim is made or lien filed with or against Contractor, its surety, if any, Owner, the Project or the premises upon which Project is located, by any person claiming that Subcontractor or any subcontractor or other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Contractor, its surety, or Owner might become liable and which is chargeable to the Subcontractor, Contractor shall have the right to retain from any payment then due or thereafter to become due an amount which Contractor deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment or default, and (3) compensate the Contractor and the Owner for and indemnify them against any and all losses, liability, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection therewith. Contractor shall have the right to apply and charge against the Subcontractor so much of the amount retained as may be required for the foregoing purposes. If the amount retained is insufficient therefore, Subcontractor shall be liable for the difference and pay the same to the Contractor.

## ARTICLE 11 LABOR RELATIONS

Subcontractor agrees to comply with all current labor contracts that Subcontractor is signatory to.

## ARTICLE 12 INDEMNIFICATION

12.1 SUBCONTRACTOR'S PERFORMANCE. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor (including its affiliates, parents and subsidiaries) and other contractors and subcontractors and all of their agents and employees from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work provided that;

(a) Any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Subcontractor's Work itself) including the loss of use resulting therefrom, to the extent caused or alleged to be caused in whole or in any part by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by the



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Subcontractor or anyone for whose acts the Subcontractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder.

(b) Such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this Article 12.

12.2 NO LIMITATION UPON LIABILITY. In any and all claims against the Owner, the Architect, the Contractor (including its affiliates, parents and subsidiaries) and other contractors or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under this Article 12 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

12.3 ARCHITECT EXCLUSION. The obligations of the Subcontractor under this Article 12 shall not extend to the liability of the Architect, its agents or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Architect, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

12.4 COMPLIANCE WITH LAWS. The Subcontractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "laws") applicable to the Subcontractor's Work including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other laws with which the Contractor must comply according to the Contract Documents.

The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.

12.5 PATENTS. Except as otherwise provided by the Contract Documents, the Subcontractor shall pay all royalties and license fees, which may be due on the inclusion of any patented materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims for infringement of any patent rights arising out of the Subcontractor's Work, which may be brought against the Contractor or Owner, and shall be liable to the Contractor and Owner for all loss, including all costs, expenses, and attorney's fees.

## ARTICLE 13 INSURANCE

13.1 SUBCONTRACTOR'S INSURANCE. Prior to start of the Subcontractor's work, the Subcontractor shall procure for the Subcontractor's Work and maintain in force Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance and all insurance required of the Contractor under the Contract Documents except as follows:

The Contractor, Owner and Architect shall be named as additional insured on each of these policies except for Worker's Compensation.

This insurance shall include contractual liability insurance covering the Subcontractor's obligation under Article 12.

13.2 MINIMUM LIMITS OF LIABILITY. The insurance required by Article 13.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

13.3 NUMBER OF POLICIES. Comprehensive General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

13.4 CANCELLATION, RENEWAL OR MODIFICATION. The Subcontractor shall maintain in effect all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor.

All insurance policies shall contain a provision that the coverages afforded there under shall not be cancelled or not renewed, nor restrictive modifications added, until at least thirty (30) days prior written notice has been given to the Contractor unless otherwise specifically required in the Contract Documents.

Certificates of Insurance, or certified copies of policies acceptable to the Contractor shall be filed with the Contractor prior to the commencement of the Subcontractor's Work.

In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage and charge the expense thereof to the Subcontractor, or terminate this Agreement.

13.5 WAIVER OF RIGHTS. The Contractor and Subcontractor waive all rights against each other and the Owner, the Architect, separate

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contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance; provided, however, that such waiver shall not extend to the acts of the Architect listed in Article 12.3.

Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Contractor. The Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of the Subcontractor's Work.

If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for portions of the Subcontractor's Work stored off the site or in transit, when such portions of the Subcontractor's Work are to be included in an application for payment under Article 5.

13.6 ENDORSEMENT. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

### ARTICLE 14 ARBITRATION

14.1 AGREEMENT TO ARBITRATE. All claims, disputes and matters in question arising out of, or relating to, this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

14.2 NOTICE OF DEMAND. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Any demand for arbitration made by the Subcontractor against the Contractor for adjustments in the contract price, additional compensation for extra work or changed conditions, or damages for delay or other causes shall be made within 180 days after written notice of the claim, dispute or other matter has been given by the Subcontractor to the Contractor. If a demand for arbitration is not made within 180 days after written notice of the claim, dispute or other matter has been given by the Subcontractor to the Contractor, the Subcontractor's claim for an adjustment in the contract price, additional compensation for extra work or changed conditions, or for damages for delay or other causes shall be barred and the Subcontractor shall not be able to recover against the Contractor.

14.3 AWARD. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

14.4 WORK CONTINUATION AND PAYMENT. Unless otherwise agreed in writing, the Subcontractor shall carry on the Work and maintain the Schedule of Work pending arbitration, and, if so, the Contractor shall continue to make payments in accordance with this Agreement.

14.5 RIGHTS OR REMEDIES PROVIDED BY STATUTE. Except as provided in this subparagraph, nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds. Subcontractor agrees, however, that any lien claims or payment bond claims shall be filed with the appropriate parties within 180 days after written notice of the claim has been given by the Subcontractor to the Contractor or within the period of time provided by statute for the filing of such claims, whichever is less.

14.6 COMMON ARBITRATORS. To the extent agreed upon by all parties, the claims and disputes of the Owner, Architect, Contractor and Subcontractor and other subcontractors and suppliers involving a common question of fact or law shall be heard by the same arbitrator(s).

### ARTICLE 15 CONTRACT INTERPRETATION

15.1 INCONSISTENCIES AND OMISSIONS. Should inconsistencies or omissions appear in the Contract Documents, the Subcontractor shall notify the Contractor in accordance with the General Conditions of the Contract Documents.

15.2 LAW AND EFFECT. This Agreement shall be governed by the law of the State of Illinois.

15.3 SEVERABILITY AND WAIVER. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

15.4 ATTORNEY'S FEES. Should either party employ an attorney to institute suit or demand arbitration to enforce any of the provisions

hereof, to protect its interest in any matter arising under this Agreement, or to collect damages for the breach of the Agreement or to recover on a surety bond given by a party under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges, and expenses expended or incurred therein.

15.5 TITLES. The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

15.6 ENTIRE AGREEMENT. This Agreement is solely for the benefit of the signatories hereto and represents the entire and Integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral.

ARTICLE 16  
SPECIAL PROVISIONS

16.1 PRECEDENCE. It is understood the work to be performed under this Agreement, including the terms and conditions thereof, is as described in Articles 1 thru 16 herein together with the following Special Provisions, which are intended to complement same. However, in the event of any inconsistency, these Special Provisions shall govern.

16.2 SCOPE OF WORK. All work necessary or incidental to complete the following work in strict accordance with the Contract Documents and as more particularly, though not exclusively specified in:

Iron Hustler Excavating shall provide all material, equipment, labor and supervision to complete your scope of work. Your scope includes but is not limited to the following:

<u>Specification Section</u>	<u>Description</u>
	Bidding Documents – As it pertains to your work
	Contract Documents – As it pertains to your work
Division 01	General Requirements – As it pertains to your work
Section 024116	Building Demolition – Complete
Section 024229	Selective Demolition – As it pertains to your work
Section 312000	Earthwork - Complete

This contractor shall provide all material, equipment, labor, and supervision to complete your scope of work. Your scope includes but is not limited to the following:

GENERAL CONDITIONS

1. Division 1 – As it pertains to your work
  - Full time onsite supervisor for the duration of this work
  - Safety barriers & safety equipment
  - Insurance
  - General cleaning & final cleaning
  - Disposal of all debris generated by your work
  - Legal disposition of materials offsite as necessary including all fees
  - Onsite material storage – coordinate location with Project Superintendent
  - Jobsite trailers/tool trailers – coordinate location with Project Superintendent
  - Layout & grades
  - All field verifying of dimensions and/or site conditions associated with your work
  - Warranty work/punch list
  - Hauling, unloading, and hoisting of materials/equipment
  - All equipment & miscellaneous tools
  - Record documents – Provide in AutoCAD 2008 format as required
  - Project barricades & traffic control
  - Ice water
  - Winter protection
  - Permits
  - Utility locates – Including JULIE
  - Cleaning of public streets as required
  - Pumping of water as necessary to complete your work
2. Your firm shall complete your portion of work in accordance with the project schedule as set forth by River City Construction. Should contractor fail to meet this schedule, you will undertake any and all efforts to bring the project back on schedule at no additional cost to River City Construction or Parkland College. These efforts will include but are not limited to overtime, additional manpower, additional tools, additional equipment, etc.



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3. A safety committee comprised of representatives of each contractor on site will monitor this project for safety. Your firm is responsible for appointing a representative to this committee to attend a one-hour per week safety review for each week that your firm is working onsite.
4. Signed Lien Waivers from subcontractors/suppliers that are hired by your firm to complete your contracted work (2nd tier lien waivers) will be required by River City prior to the release of monthly pay requests.

## Site Clearing & Erosion Control:

1. Perform all site removal in accordance with Contract documents. This includes: Bituminous and concrete paving and sidewalks, pavement, trees, shrubs, stairs stoops, curb and gutter, misc concrete pads.
2. Saw cut and break free these items where existing work is to remain.
3. Remove items as required to allow proper access for building demolition after new building is complete.
4. Perform all tree and brush removal as required. This includes full stump removal.
5. Provide temp construction entrance and removal as directed by RCC and shown on contract documents. This would include placement and removal as requested.
6. This contract includes installation and removal of silt fence and inlet silt baskets. Your firm will be responsible for the maintenance and upkeep of these items while on site. Damage done by others will be corrected by contractor responsible for damage or RCC. IronHustler shall be reimbursed if asked to perform corrective work of which they are not responsible.
7. Your firm is responsible to protect any trees/plants/bushes that are to remain.

## Building Demolition:

1. Remove and salvage parking blocks and the existing school bell.
2. Remove and salvage limestone façade from existing building.
3. Remove and legally dispose of existing high school building. Include removal of all existing foundations.
4. Backfill at demolished building to proper subgrade for landscaping and asphalt paving.

## Site Excavation & Grading:

1. Perform all top soil removal and replacement. This work shall be coordinated with RCC. If acceptable on site storage location of top soil is accepted by RCC, material shall remain on site. If acceptable soil location cannot be determined your firm will be responsible for haul off and hauling back in material.
2. This contract includes establishing proper subgrade for building pad, curbs, sidewalks, paving, pavement and misc. site concrete pads.
3. Furnish and install top soil in proposed yard locations.
4. Your firm shall install and maintain the project site entrance.
5. Maintain the concrete washout in coordination with River City Project Superintendent.

## Building Excavation & Backfill:

1. Your firm shall perform all building excavation and backfill as required by the contract documents.
2. This includes backfill on both the inside and outside of the building.
3. Your firm shall bank and set back excavations in accordance with OSHA requirements and as directed by RCC to ensure safe entrance in and out of excavations.
4. It is RCC intent to bank pour footings were possible. This work will be determined by existing soil conditions and current weather conditions. If it is not possible to bank pour these footings your firm shall over excavate and backfill as needed for RCC to form these footings.
5. It is understood that most backfill operations cannot happen until precast walls are set. Your firm shall and will be required to size your equipment and backfill around walls and temp bracing for these walls.
6. Backfill shall be installed on equal amounts on both sides of walls to not induce any uneven pressures on walls.
7. This contract includes excavating and providing proper backfill around foundation drains being installed by others.
8. Your firm will be required to only "open up" enough excavation that RCC can pour behind you within the same day. Any pumping of water on excavations that were "opened up" in advance of RCC's planned work will be your firm's responsibility.
9. Your firm shall be responsible for removal of all excavation spoils created by your work. These shall be removed from the site.
10. This contract includes drilling for site bollards.

## Top Soil & rock subgrade:

1. Your firm shall haul in or spread topsoil to +/- one tenth ready for landscaping by others. It is understood that this will include any handwork where required next to sidewalks or buildings/structures where machine work is not possible.
2. Upon completion of spreading top soil provide erosion control blankets as required to maintain topsoil on slopes until seeding/landscaping is accomplished by others.
3. Your firm shall haul in and spread rock subgrade to +/- one tenth ready for concrete work by others. This includes building slab on grade as well as site concrete work. This includes any subgrade transitions for different elevations as well as any locations that required thickened slabs.
4. Your firm shall accomplish this work around any structural steel, electrical or mechanical stub ups. Any damage done to these

items will be your firm's responsibility.

Misc. Items:

1. Your firm shall supervise and coordinate their work with River City's on-site superintendent for the duration of the project.
2. Your firm is responsible for the cleanup of all debris associated with their work. This will be enforced at the discretion of the General Contractor.
3. Your firm shall be responsible for costs associated with background checks of your employees. River City Construction shall provide badges for those employees that are approved to work on site.
4. Coordinate all deliveries and installation sequence with River City's on-site superintendent.
5. Your firm shall not progress on work that it believes is in addition to the contract until first notifying River City Construction's on-site superintendent.
6. All work associated with unloading and hoisting your materials and equipment.
7. Include all work associated with caulking, firesafing, and firestopping of your work.
8. It is your responsibility to provide proper tools, ladders, equipment, etc. to install your portion of work. This includes all safety equipment consistent with OSHA standards.
9. It is your responsibility to provide any small tools used in conjunction with your work.
10. It is your responsibility to provide labor and equipment to unload and hoist the material deliveries to predetermined staging areas and to within working proximity. Coordinate staging locations with onsite River City Construction superintendent.
11. Removal of excess material from the site is this contractor's responsibility.
12. It is your responsibility for any costs associated with damage of finished product (painted walls, frames, doors, flooring, etc.).
13. Include all miscellaneous concrete associated with your work: collars, thrust blocks, etc.
14. Include removal of all spoils from the site that are associated with your work.
15. Protect all remaining trees from damage due to heavy equipment. Minimize disruption to root system.
16. This will be a tax exempt project.
- ~~17. Include all testing associated with your work.~~ *RD KLB*
18. Due to the phasing of this project, it is understood that multiple mobilizations may be required.

16.3 COMMON TEMPORARY SERVICES. The following "Project" common temporary services and/or facilities are for use of all project personnel and shall be furnished as herein below noted:

By General Contractor:                      Temporary Toilet Facilities  
 Temporary electric power for small tool usage will be provided at a central location as determined by the General Contractor. Any branch lines permanent and/or non-permanent are the responsibility of this Subcontractor.

By this Subcontractor:                      Drinking water for Subcontractors personnel.  
 Disposal of all debris created by your forces.

16.4 OTHER SPECIAL PROVISIONS.    See Attachment "A" for Subcontractors  
 See Attachment "B" Safety Declaration for Subcontractors  
 See Attachment "C" River City Construction Clean Project Jobsite Policy  
 See Attachment "D" Subcontractor Close-Out Agreement  
 See Attachment "E" Standard Subcontract Insurance Requirements

16.4.A This is to inform you, that River City Construction, L.L.C. is committed to non-discrimination in employment according to Executive Order 11246, Section 503 and the affirmation action provisions of VEVRAA. The provisions of Executive Order 11246 are a condition of your subcontract and your full compliance is required. Periodic reports may be required of you to ensure compliance with the provisions.

16.5 CONTRACT DOCUMENTS. See Attachment "A"

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal, the day and year first above written.

Subcontractor: Iron Hustler Excavating

Contractor: River City Construction, L.L.C.

By: *RF*  
 Rob Frederick  
 Date: July 13, 2016

By: *KB*  
 Kevin Beal, Project Manager  
 Date: 8/1/16

ATTACHMENT "A" FOR SUBCONTRACTORS

1. This purchase order is based on the following contract documents:

Delavan New High School  
Delavan, Illinois

Volume 1 and 2 Specifications dated January 11, 2016  
Volume 1 and 2 Drawings dated January 11, 2016  
Addendum #1 Dated January 29, 2016 (2 pages plus attachments)  
Addendum #2 Dated February 5, 2016 (7 pages plus attachments)  
Addendum #3 Dated February 10, 2016 (5 pages plus attachments)  
Addendum #4 Dated February 12, 2016 (9 pages)

As prepared by BLDD Architects  
201 E Grove St  
Bloomington, IL 61701

2. Original submittals shall contain one (1) electronic complete sets of drawings and other descriptive data. The letter of transmittal shall contain the name of the project, division number, name of contractor, the list of drawings submitted including numbers and titles, as well as any additional information required as stated in the specifications. All reproducibles or copies shall be labeled giving the name of the project, name of the Architect/Engineer, name of the contact and supplier, specification section, page or article, plus manufacturer and trade name, as well as any other additional information required as stated in the specifications. Submittals showing more than one size or model shall be marked to indicate the proposed item. Each submittal shall have evidence of subcontractor's review and approval. Subcontractor shall accept full responsibility for the completeness of each submission, and in case of resubmission, shall verify that all exceptions previously noted by Engineer have been taken into account. In the event that more than one (1) resubmission is required because of failure to account for exceptions previously noted, the supplier shall reimburse the Contractor for the charges of the Architect/Engineer for review of the additional submission. Resubmittals shall be made within ten (10) days of the date of the letter returning the material to be modified or corrected. **Make sure submittals are complete and per specifications.**

Shop drawings shall be submitted to River City Construction, L.L.C. within three (3) weeks upon receipt of a subcontract. The Subcontractor will send a written confirmation of the submittal date, delivery date, and delivery date of Operation and Maintenance Manuals as required. If any of these dates are changed, the Subcontractor will submit to River City Construction, L.L.C., in writing, the updated submittal schedule.

**All Shop Drawings Within three (3) weeks upon receipt of subcontract**  
**Delivery of Materials As Scheduled**

3. Operation and maintenance data shall be completed in accordance with Specification Section 017700 – Project Close Out, with one (1) electronic and three (3) paper copies being submitted by November 1, 2017 In addition to the four(4) copies specified, the Subcontractor shall furnish any additional copies that may be required for use during construction and start-up operations.
4. Each Subcontractor shall maintain a set of project record documents in accordance with Specification Section 017700 – Project Close Out. These drawings shall be marked up to show changes made during construction. These record drawings shall be submitted to and approved by the Owner's representative prior to final payment.
5. All spare parts shall be properly identified by part numbers, wrapped for proper protection and placed in the storage location designated by the Owner. All spare parts must be turned over in full units. No partially left over items will be accepted.
6. The project is tax-exempt in accordance with the attached tax-exempt certificate. The tax-exempt number is E9993-0099-07 .
7. The jobsite is very restricted on storage and available room for loading and unloading. This Subcontractor is responsible for unloading their materials. 48-hours notice must be given to River City Construction, L.L.C. prior to receiving shipments. Failure to do so may result in refusal to receive material. The refusal of material will not result in any additional charge issued to River City Construction, L.L.C. Contact River City Construction, L.L.C.'s field office to confirm delivery instructions.

The Project Manager, Kevin Beal's cell phone number is (309) 339-6970. The Superintendent, Jon Stegmaier's cell phone number is (309)303-0598. If no answer, contact River City Construction, L.L.C.'s main office at (309) 694-3120.



## Electronic Filing: Received, Clerk's Office 03/29/20

8. Time is of the essence. Your work must keep pace with general progress. Materials must be ordered with sufficient lead time to arrive at the jobsite before incorporation of said materials is ready to begin so that no delays are experienced by any lack of materials. Acceptance of this contract indicates agreement to have materials and labor as required to meet the intent of the project schedule.
9. Payment Terms: 90% of work completed in the previous month, payment within seven (7) days after receipt of payment from the Owner. 10% retainage is held by the Owner until project completion. **Final payment will be made after receipt of spare parts, Operation and Maintenance manuals, final drawings, acceptance and testing by Engineer. A waiver of lien from the previous month's payment application must be attached to each invoice.**
10. River City Construction, L.L.C. must receive payment applications from each subcontractor by the third Thursday of each month. **Failure of a subcontractor to submit their pay application before the third Thursday of the month will result in their pay application being held until the following month's pay application to the owner.** River City Construction, L.L.C. must submit pay applications to the Owner by the Fourth Thursday of each month.
11. In no case will progress payments be made until all shop drawings have been submitted to River City Construction, L.L.C.'s office.
13. Insurance: A certificate of insurance must be on file at River City Construction, L.L.C.'s main office prior to beginning any work. It must be in accordance with Specification Section 007300. The certificate of insurance must name River City Construction, L.L.C., Delavan CUSD #703, BLDD Architects, Inc., KED Engineering Design, Inc., Midwest Engineering Associates, Inc. and their consultants as additional insureds.
14. Subcontractor shall guarantee all materials furnished and work performed for a period of one (1) year from the date of substantial completion unless contract documents require longer warranty. Subcontractor guarantees that completed work is free from all defects due to faulty materials or workmanship and shall promptly make such correction as may be necessary at no additional cost to River City Construction, L.L.C. or the Owner.
15. Shop and field painting shall conform to the requirements of Specification Section 09900. It is the Subcontractors responsibility to verify that any equipment, materials, etc. provided by them and that are to receive a field coat of paint have a primer which is compatible with that finish coat of paint.
16. All claims for additional monies for work in excess of contract shall be turned in and signed off by River City Construction, L.L.C.'s Superintendent or Project Manager within five (5) days of occurrence. Failure to comply shall result in the forfeiture of said claim. **This will be strictly adhered to.** Subcontractor will not proceed with any change order work until River City Construction, L.L.C. has given authorization.
17. The Subcontractor shall follow the contractor's clean up directions:
  - A. The Subcontractor shall be responsible for removing his debris from the work site and shall leave the area "broom clean" upon completion of his portion of the work.
  - B. If the Subcontractor fails to immediately commence compliance with such safety duties or commence clean up duties within 24 hours after receipt from the contractor, the contractor may implement such safety or clean up measures without further notice and deduct the cost thereof from the monies due or to become due to the subcontractor.
18. The attached "Subcontractor Safety Declaration" shall be adhered to and signed and submitted prior to commencement of any work.
19. All Subcontractors shall be signatory to the local union agreements governing work on this project and shall work in accordance to said agreement.
20. Each Subcontractor shall follow the all local/municipal, etc. licensing and permit requirements. These requirements shall be fulfilled with no additional cost to River City Construction, L.L.C. prior to commencing work at this site.
21. Subcontractor shall adhere to all OSHA safety regulations and/or standards.
22. The attached "Subcontractor Project Close-Out Agreement" shall be adhered to and signed and submitted prior to commencement of any work.
23. Certified payrolls must be submitted weekly to River City Construction, L.L.C.'s office or subsequent pay request will be withheld.

24. Each subcontractor shall utilize the minority and female work force in such manner that the goals of Executive Order 11246 dealing with the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity is fulfilled.
- 
- 
-

Date 7-7-17  
 Company Name IHX  
 Job Name or Number Delavan School  
 Driver / Truck# Drew Muttam 135

02-060

Start Time 7:00 AM  
 Finish Time 3:30 pm  
 Lunch 1/2  
 Total Hours 8

Commodity	From	To	Start Time	Finish Time	Loads	Pay Item	AM
Demo	Delavan	Hopedale	7:00		11		
	Delavan	Farmer			1111		

Superintendent Signature [Signature]  
 Subcontractor Signature [Signature]

30 Minute lunch will be deducted from total hours unless otherwise noted by Superintendent  
 KENNEL-007 (Rev. 09/15) CMFI

Date 7-7-17  
 Company Name IronHustler  
 Job Name or Number Delavan School  
 Driver / Truck# Tim Cook #724

02-060

Start Time 7:30 A.M.  
 Finish Time 3:30 P.M.  
 Lunch 1/2 hr.  
 Total Hours 7 1/2

Commodity	From	To	Start Time	Finish Time	Loads	Pay Item	AM
Demo School	Delavan School	Hopedale Farm Site			1111		
Demo School	"	Hopedale Landfill			1		

Superintendent Signature [Signature]  
 Subcontractor Signature Tim Cook

30 Minute lunch will be deducted from total hours unless otherwise noted by Superintendent  
 KENNEL-007 (Rev. 09/15) CMFI



02-060

**Hourly Time Sheet 45210**

Date 7-7-17  
Company Name IHX  
Job Name or Number DELAUAN SCHOOL  
Driver / Truck# JERRY PISEL #45

Start Time 7:15 AM  
Finish Time 3:15 PM  
Lunch 1/2 HR. LUNCH  
Total Hours 7

Commodity	From	To	Start Time	Finish Time	Loads	Pay Item	AM
DEMO	SCHOOL	LANDFILL			II		
DEMO	SCHOOL	FARMER			IIII		

Superintendent Signature [Signature]  
Subcontractor Signature Jerry Pisel

30 Minute lunch will be deducted from total hours unless otherwise noted by Superintendent  
KENNEL-007 (Rev. 09/15) CMFI

02-060

**Hourly Time Sheet 45641**

Date 7-7-17  
Company Name IHX  
Job Name or Number Devalan school  
Driver / Truck# Rocky Gray 7

Start Time 7:00 AM  
Finish Time 3:00 PM  
Lunch 30 min lunch  
Total Hours 7.50

Commodity	From	To	Start Time	Finish Time	Loads	Pay Item	AM
DEMO	School	landfill			II		
	School	farmer			IIII		

Superintendent Signature [Signature]  
Subcontractor Signature [Signature]

30 Minute lunch will be deducted from total hours unless otherwise noted by Superintendent  
IHX-000045

Date 7-7-17

Start Time 7:30 AM

Company Name IHX

Finish Time 2:30 PM

Job Name or Number Delavan Hill School 02-060

Lunch 1/2 hr

Driver / Truck# Boys M/TAM 77

Total Hours 7

Commodity	From	To	Start Time	Finish Time	Loads	Pay Item	AM
DRMO	Delavan	Hwy 24 L.A.M.S. - Pill	7:30 AM		111		
	Delavan	Farmer			111		

Superintendent Signature [Signature]  
Subcontractor Signature [Signature] 77

30 Minute lunch will be deducted from total hours unless otherwise noted by Superintendent  
KENNEL-007 (Rev. 09/15) CMI

Date 7-7-17

Start Time 7:15 a.m.

Company Name IHX

Finish Time 3:15 P.M.

Job Name or Number Delavan

Lunch 1/2 hr

Driver / Truck# Damerell/103

Total Hours 7

Commodity	From	To	Start Time	Finish Time	Loads	Pay Item	AM
Debris	Site	Taz Cty Landfill			11		
	Delavan	farmer			1111		

Superintendent Signature [Signature]  
Subcontractor Signature [Signature]

30 Minute lunch will be deducted from total hours unless otherwise noted by Superintendent  
IHX-000046

401 MAIN STREET  
SUITE 1600  
PEORIA, ILLINOIS 61602-1241  
TEL: (309) 673-1681  
FAX: (309) 673-1690  
www.dcampplaw.com

**DAVIS & CAMPBELL L.L.C.**

07241-001

FILE NUMBER:

September 22, 2017

**VIA HAND DELIVERY**

Jason Thorp, Field Operations Section  
Peoria Regional Office  
Illinois Environmental Protection Agency  
412 SW Washington Street, Suite D  
Peoria, IL 61602

Re: Violation Notice, M-2017-01015  
1798095013 -- Tazewell County  
Venovich Construction Company  
Compliance File

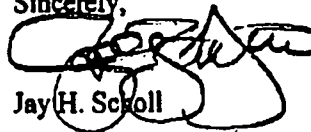
Dear Mr. Thorp:

By way of introduction, my name is Jay H. Scholl, and I am an attorney at Davis & Campbell L.L.C. We represent IronHustler Excavating, Inc. ("IronHustler") with respect to the matters raised in the Violation Notice dated August 17, 2017 (the "VR").

In the VR, the Illinois Environmental Protection Agency requested IronHustler to submit copies of all waste disposal receipts to you to document the proper disposal of all waste and other materials. Copies of manifests showing the acceptance of 567.32 tons of material by the Tazewell County Landfill on July 17, 2017, are enclosed with this letter.

By submitting these waste disposal receipts, IronHustler is not admitting that it violated the Illinois Environmental Protection Act or the regulations of the Illinois Pollution Control Board. If you have any questions, please do not hesitate to contact me at (309) 673-1681.

Sincerely,



Jay H. Scholl

JHS/dlf  
Enclosures  
00189049.DOC

cc: David Schielein ([dschielein@yahoo.com](mailto:dschielein@yahoo.com))  
William H. Campbell ([whcampbell@dcampplaw.com](mailto:whcampbell@dcampplaw.com))

PEORIA, ILLINOIS

CHICAGO, ILLINOIS

WASHINGTON, D.C.

IHX-000317