

TENDER AND RELEASE AGREEMENT

THIS TENDER AND RELEASE AGREEMENT ("Agreement") is made by and between the Board of County Commissioners of Lancaster County, Nebraska ("County") and Hudson Insurance Company ("Hudson") (individually, a "Party" and collectively, the "Parties").

RECITALS

A. On or about August 21, 2018, TCW Construction, Inc. ("TCW") entered into an Agreement with County ("Original Contract"), pursuant to which TCW agreed to perform the work and supply the materials and equipment necessary to perform the work for the project known as Bid No. 18-172, Project No. 17-09 Concrete Box Culverts G-111 and G-144 ("Project"); and

B. In connection with the Project, Hudson, as surety, and TCW, as principal, issued Bond #HGMW-10-A15-1194 in the penal sum of \$377,025.15 with County as obligee (the "Bond"); and

C. The Original Contract provides for payment for the work on the basis of unit prices for approximate quantities of specified items, with an estimated total price of \$377,025.15 and TCW has been paid the sum of \$0, leaving a current balance of the estimated total price of \$377,025.15 for the completion of the remaining Original Contract work ("Balance of the Contract Price"); and

D. By letter dated March 15, 2019, TCW acknowledged to Hudson that it was unable to complete the performance of the work on the Project or comply with its contractual obligations under the Original Contract and was in default; and

E. To satisfy its performance bond obligation to the County, Hudson has tendered to County a Completion Contractor, Bauer Underground, Incorporated ("Completion Contractor"), and arranged for County to enter into a new contractual agreement ("Completion Contract"), under which Completion Contractor will: (1) complete all of the work to be performed under the Original Contract on a unit price basis; (2) warrant all of the work to be performed to complete the Original Contract; (3) satisfy all of the obligations of TCW under the Original Contract; (4) furnish to County Completion Contractor's bond on the same form as the Original Contract required in the full amount of the Completion Contract guaranteeing said performance; and (5) complete the remaining work in forty-three (43) working days from a Notice to Proceed from County; and

F. County represents that there are no installed quantities on the Project.

G. Hudson has agreed to make a payment to County in the amount of \$82,974.85, the difference between the Balance of the Contract Price and the Completion Contractor's price for the quantities at Completion Contractor's unit prices, as a cash settlement of County's claims asserted against the Bond ("Surety's Payment"); and

H. The tender proposal and Surety Payment are acceptable to County and the Parties desire to document the terms of such agreement as set forth below.

D/S

In consideration of the agreements and undertakings set forth below and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. County represents that the sum of \$377,025.15 is the unpaid Balance of the Contract Price.
2. Administration and inspection of the Project will remain with County and its agents/engineers and inspectors in accordance with the terms of the Original Contract.
3. Hudson agrees to make the Surety Payment to County within ten (10) business days of the Effective Date.
4. Upon receipt of the Surety Payment, County expressly RELEASES, ACQUITS and FOREVER DISCHARGES Hudson and its successors and assigns of and from any and all claims, rights, demands and/or causes of action of whatsoever kind or nature which County has or may ever claim to have, now or in the future, against Hudson under and/or by reason of its Bond.
5. Hudson expressly RELEASES, ACQUITS and FOREVER DISCHARGES County and its successors and assigns of and from any and all claims, rights, demands and/or causes of action of whatsoever kind or nature which Hudson has or may ever claim to have, now or in the future, against County under and/or by reason of its Bond and the Original Contract.
6. County assigns unto Hudson, its successors and assigns any and all claims, rights, demands, and/or causes of action of whatsoever kind or nature which County has or may ever claim to have, now or in the future, against TCW arising out of, as a result of and/or on the basis of the default and failure to complete the Original Contract, and County gives Hudson, its successors and assigns full power and authority for its own use and benefit, but at its own cost, to ask, demand, collect, receive and/or release, and in its name or otherwise, to prosecute and withdraw any claims, suits or proceedings at law or in equity against TCW in its efforts to obtain recovery upon its rights under said assignment.
7. All notices sent in accordance with the Original Contract or this Agreement shall be sent to the Party to receive such notice at the addresses set forth below or to such other address as either Party may specify in writing, and shall be presumed to have been given three (3) calendar days after mailing, provided mailing was by certified mail, with a copy transmitted by electronic mail, addressed to the intended recipient at its address set forth below:

Hudson:

David Styers
Hudson Insurance Company
3301 Windy Ridge Parkway SE Suite 275
Atlanta, GA 30339
dstyers@hudsoninsgroup.com

With a copy to: Carol Z. Smith
Dysart Taylor Cotter McMonigle & Montemore, P.C.
4420 Madison Ave. Suite 200
Kansas City, MO 64111
csmith@dysarttaylor.com

County: Pam Dingman, PE F. SWE
Lancaster County Engineer
Lancaster County
444 Cherrycreek
Lincoln, NE 68528
pdingman@lancaster.ne.gov

8. Except as otherwise expressly set forth herein, the Parties reserve all claims, rights, remedies, and defenses they may have against any person or legal entity not a signatory hereto, including, but not limited to, TCW, and any and all suppliers, materialmen, and subcontractors.

9. This Agreement is solely for the benefit of the Parties. The Parties do not intend by any provision of this Agreement to create any rights in favor of any person or entity other than the Parties. Further, the Parties acknowledge and agree that nothing in this Agreement is intended to or shall be construed to grant or expand any rights of any third-party claimants or the liabilities or obligations of Hudson under the Bond or waive or alter any available defense or limitation against any third-party claims.

10. This Agreement constitutes the entire Agreement and understanding of the Parties hereto relating to the subject matter hereof, and shall supersede all prior or contemporaneous agreements, understandings, representations, and warranties, whether written or oral, relating to the subject matter hereof. Each of the Parties acknowledges that the other Party, or anyone acting on behalf of the other Party has made no representations, inducements, promises, or agreements, orally or otherwise, unless such representations, inducements, promises, or agreements are embodied in this Agreement.

11. The Recitals to this Agreement are incorporated into this Agreement and form a part of the terms and conditions of this Agreement. The Parties, together with their respective attorneys, participated in the drafting and preparation of this Agreement. Therefore, this Agreement shall not be construed in favor of or against any Party on the basis that any such Party did or did not participate in the drafting of this Agreement.

12. Each Party hereto expressly warrants that it has the necessary authority to execute this Agreement and that each signatory hereto has authority to execute this Agreement on behalf of the respective named Party.

13. This Agreement and the respective rights and obligations of the Parties shall inure to

the benefit of and be binding upon the successors and assigns of the Parties.

14. The Effective Date of this Agreement is the date of the execution of a Completion Contract between County and Completion Contractor.

BOARD OF COUNTY COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA

By: _____

Its: _____

Date: _____

HUDSON INSURANCE COMPANY

By: *[Signature]*

Its: *Contract Surety Claims Manager*

Date: *April 25, 2019*