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04/05/16

### WOODBURY COUNTY, IOWA CONTRACT

Kind of Work Bridge Replacement  
Project No FEMA 9, 14-73-97 County Woodbury

THIS AGREEMENT made and entered by and between Woodbury County, Iowa, by its Board of Supervisors consisting of the following Members: Jeremy Taylor, Mark Monson, Larry D. Clausen, Jaclyn Smith and Matthew Ung, Contracting Authority, Holly Brown Construction of Ponca Neb, Contractor.

WITNESSETH: That the Contractor, for and in consideration of \_\_\_\_\_  
Fifty-five Thousand Seven Hundred Forty-one and 64/100 (\$55,741.64)

payable as set forth in the specifications constituting a part of this contract, hereby agrees to construct in accordance with the plans and specifications therefore, and in the locations designated in the notice to bidders, the various items of work as follows:

Item No.	Item	Quantity	Unit Price	Amount
Project: FEMA 9, 14-73-97 Group 1				
1.	Clear and Grubb	0.22 Acres	\$2,000.00	\$ 440.00
2.	Embankment in Place	480.00 C.Y.	10.00	4,800.00
3.	Excavation Class 10, Roadway and Borrow	140 C.Y.	7.00	980.00
4.	Excavation Class 12, Boulders or Rock Fragment	20 C.Y.	15.00	300.00
5.	Excavation Class 10, Channel	100 C.Y.	8.00	800.00
6.	Removal of Existing Structure	1 L.S.	500.00	500.00
7.	Excavation Class 20	300 C.Y.	10.00	3,000.00
8.	Structural Concrete (Curtain Wall)	6.33 C.Y.	800.00	5,064.00
9.	Reinforcing Steel Epoxy Coated	300 Lbs	2.00	600.00
10.	CMP Culvert Roadway 72" Dia	98 L.F.	145.92	14,300.16
11.	Piles Steel Sheet	192 S.F.	40.00	7,680.00
12.	Revetment Class E	40 Ton	38.05	1,522.00
13.	Safety Closure	2 Each	100.00	200.00
14.	Traffic Control	1 L.S.	2,400.00	2,400.00
15.	Flaggers	4 Each	435.00	1,740.00
16.	Mobilization	1 L.S.	6,500.00	6,500.00
17.	6' X 6' X 8' Wooden Guardrail post	7 Each	150.00	1,050.00
18.	Modified Class C Gravel	70 Ton	26.65	1,865.50
19.	Mulching	0.30 Acre	3,333.33	999.99
20.	Seeding and Fertilizing (Rural)	0.30 Acre	3,333.33	999.99
<b>TOTAL BID</b>				<b>\$55,741.64</b>

Said specifications and plans are hereby made part of and the basis of this agreement and a true copy of said plans and specifications are now on file in the office of the County Engineer under the date of February 10, 2016

That in consideration of the foregoing, the Contracting Authority hereby agrees to pay the Contractor, promptly and according to the requirements of the specifications the amounts set forth, subject to the conditions as set forth in the specifications.

That it is mutually understood and agreed by the parties hereto that the notice to bidders, the proposal, the specifications for Project No. FEMA 9, 14-73-97 in Woodbury County, Iowa, the within contract, the contractor's bond, and the general and detailed plans are and constitute the basis of contract between the parties hereto.

That it is further understood and agreed by the parties of this contract that the above work shall be commenced and completed on or before:

Approximate Starting Date	Specified Starting Date	Late Start Date	Number of Working Days
		May 02, 2016	35

That time is the essence of this contract and that said contract contains all of the terms and conditions agreed upon by the parties hereto.

It is further understood that the Contractor consents to the jurisdiction of the courts of Iowa to hear, determine, and render judgment as to any controversy arising hereunder.

IN WITNESS WHEREOF the parties hereto have set their hands for the purposes herein expressed to this and three other instruments of like tenor, as the

28 day of March, 20 16

Approved: [Signature]  
By [Signature]  
Contractor: Holly Brown Construction

By [Signature]  
Contracting Authority: Woodbury County Board Jeremy Taylor

Date 3-28-16

Date 4-5-16

**PAYMENT BOND**

CONTRACTOR (name and address):

Holly Brown Construction, Inc.  
 58732 883 Rd.  
 Ponca, NE 68770

SURETY (name and address of principal place of business):

WESTERN SURETY COMPANY  
 333 S. Wabash Avenue, 41st Floor  
 Chicago, IL 60604

OWNER (name and address):

County of Woodbury  
 Board of Supervisors, 620 Douglas St.,  
 Sioux City, IA 51101



CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount: \$55,741.64

Description (name and location): Project No. FEMA 9, FEMA 14-73-97 Guardrail Repair & Culvert Replacement

BOND

Bond Number: 71769131

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): March 29, 2016

Amount: \$55,741.64

Modifications to this Bond Form:  None  See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Holly Brown Construction, Inc. (seal)  
 Contractor's Name and Corporate Seal

WESTERN SURETY COMPANY (seal)  
 Surety's Name and Corporate Seal

By: Holly A Brown  
 Signature

By: Norman Joe Herian  
 Signature (attach power of attorney)

Holly A Brown  
 Print Name

NORMAN JOE HERIAN  
 Print Name

President  
 Title

Attorney In Fact  
 Title

Attest: Rae  
 Signature

Attest: Sue Bernstrauch  
 Signature

Secretary  
 Title

Agent  
 Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.



1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and the tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants who do not have a direct contract with the Contractor,
    - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
  - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owned by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.



12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) of (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
- 16.1 **Claim:** A written statement by the Claimant including at a minimum:
1. The name of the Claimant;
  2. The name of the person for whom the labor was done, or materials or equipment furnished;
  3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
  4. A brief description of the labor, materials, or equipment furnished;
  5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:



# Western Surety Company

## POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 71769131

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint NORMAN JOE HERIAN

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: Holly Brown Construction, Inc.

Obligee: County of Woodbury

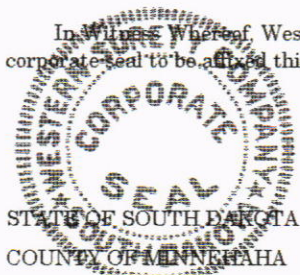
Amount: \$500,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Senior Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of June 6, 2016, but until such time shall be irrevocable and in full force and effect.

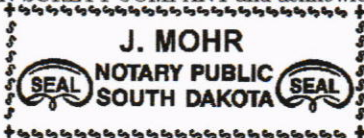
In Witness Whereof, Western Surety Company has caused these presents to be signed by its Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 29th day of March, 2016.



WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

On this 29th day of March, in the year 2016, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



Notary Public - South Dakota

My Commission Expires June 23, 2021

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 29th day of March, 2016.

WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

To validate bond authenticity, go to [www.cnasurety.com](http://www.cnasurety.com) > Owner/Obligee Services > Validate Bond Coverage.