



# WOODBURY COUNTY CONTRACT

Kind of Work P.C.C. Patching at various locations in Woodbury County Miles \_\_\_\_\_

Project No. P.C.C. Patching 2020 County Woodbury

THIS AGREEMENT made and entered by and between Woodbury County, Iowa, by its Board of Supervisors consisting of the following members: Matthew Ung, Rocky De Witt, Marty Pottebaum, Keith Radig, and Justin Wright, Contracting Authority, and Ten Point Construction Company of Denison, Iowa Contractor.

WITNESSETH: That the Contractor, for and in consideration of \_\_\_\_\_  
One Hundred Five Thousand Fifty One and 34/100 (\$105,051.34)

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
PCC Patching at various locations in Woodbury County		Group 1		
1.	Full Depth Saw/Remove, Patch 8"	391.83 S.Y.	\$ 101.00	\$ 39,574.83
2.	Patch by Count	49 Each	\$ 59.00	\$ 2,891.00
3.	PCC 9" Full Depth Glenn Ellen Roadway and Radius	340.01 S.Y.	\$ 78.00	\$ 26,520.78
4.	Bridge Approach Reinforced Section	164.50 S.Y.	\$ 147.22	\$ 24,217.69
5.	Class 10 Roadway	150.00 C.Y.	\$ 15.00	\$ 2,250.00
6.	Mobilization	1 Lump Sum	\$ 4,950.00	\$ 4,950.00
7.	Traffic Control	1 Lump Sum	\$ 4,000.00	\$ 4,000.00
8.	Safety Closure	2 Each	\$ 150.00	\$ 300.00
9.	Modified Backfill, Place Only	86.76 C.Y.	\$ 4.00	\$ 347.04
<b>TOTAL BID</b>				<b>\$105,051.34</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 date of September 10, 2020

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. PCC Patching 2020 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	Completion Date	Number of Working Days
		November 28 , 2020	

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

\_\_\_\_\_ day of \_\_\_\_\_, 2020

Contractor: Ten Point Construction Co

Contracting Authority: Woodbury County, Iowa

By \_\_\_\_\_

By \_\_\_\_\_

Chairman

Date 9/30/2020

Date 10-6-20

**MERCHANTS**  
**BONDING COMPANY™**

MERCHANTS NATIONAL BONDING, INC. P.O. BOX 14498, DES MOINES, IA 50306-3498  
PHONE: (800) 678-8171 FAX: (515) 243-3854

**Performance Bond**

Bond No. NIA 3545

**CONTRACTOR:**

*(Name, legal status and address)*

Ten Point Construction Co, Inc.  
2212 Hwy. 59  
Denison, IA 51442

**OWNER:**

*(Name, legal status and address)*

Woodbury County Board of Supervisors  
Office of Public Bidding, 620 Douglas Street  
Sioux City, IA 51101

**CONSTRUCTION CONTRACT**

Date: September 10, 2020

Amount: \$105,051.34

**Description:**

*(Name and location)*

PCC Patching 2020, Woodbury County, Iowa

**BOND**

Date: October 1, 2020

*(Not earlier than Construction Contract Date)*

Amount: \$105,051.34

Modifications to this Bond:  None  See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*  
Ten Point Construction Co, Inc.

Signature: 

Name K.R. Burk  
and Title: President

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

*(FOR INFORMATION ONLY— Name, address and telephone)*

**AGENT or BROKER:**

The Hoffman Agency  
PO BOX 232  
Mapleton, IA 51034  
712-881-1578

**SURETY**

Company: *(Corporate Seal)*  
Merchants National Bonding, Inc.

Signature: 

Name Kurt M Miller  
and Title: Attorney-In-Fact

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*



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

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

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

Printed in cooperation with American Institute of Architects (AIA). The language in this document conforms exactly to the language used in AIA Document A312-Performance Bond-2010 edition.

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

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

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

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

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

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

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

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

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

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

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

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

§ 7 If the Surety elects to act under Section 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

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

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

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

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

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

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

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

#### § 14 Definitions

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

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

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

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

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

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

§ 16 Modifications to this bond are as follows:

None

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

**CONTRACTOR AS PRINCIPAL**  
Company: \_\_\_\_\_  
*(Corporate Seal)*

**SURETY**  
Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address: