

BILL NO. 487

ORDINANCE NO. 468

INTRODUCED BY: Trustees Slama, Fortune, Graves, Whitmore and Eisenhauer

**AN ORDINANCE AUTHORIZING THE CHAIRMAN OF THE
BOARD OF TRUSTEES TO ENTER INTO A CONTRACT WITH SWEETEN'S
CONCRETE SERVICES, LLC FOR THE WOODLAND OAKS COURT CONCRETE
PAVEMENT AND VILLAGE CURBING REPAIRS PROJECT**

WHEREAS, the Board of Trustees received a proposal from Sweeten's Concrete Services, LLC for the Woodland Oaks Court Concrete Pavement and Village Curbing Repairs Project; and

WHEREAS, Sweeten's Concrete Services, LLC has proposed to complete this work for a fee of \$44,444.44; and

WHEREAS, the Board of Trustees wishes to accept such proposal.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF TWIN OAKS, MISSOURI, AS FOLLOWS:

SECTION 1. The Chairman of the Board of Trustees is hereby authorized and directed to enter into a contract with Sweeten's Concrete Services, LLC for the Woodland Oaks Court Concrete Pavement and Village Curbing Repairs Project.

SECTION 2. This Ordinance shall be in full force and effect after its passage and approval as provided by law.

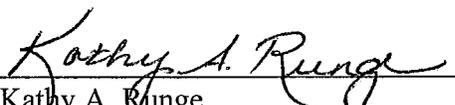
PASSED AND APPROVED THIS 16th day of September, 2015.



Ray Slama, Chairman
Board of Trustees

ATTEST:

First Reading: 9-16-2015



Kathy A. Runge
Village Clerk/Controller

Second Reading: 9-16-2015

In completing this form the title that is not applicable should be struck out. For example, if the CONTRACTOR is a corporation and this form is to be executed by its president, the words "Sole owner, a partner, secretary, etc." should be stricken.

OWNER-CONTRACTORS AGREEMENT

This agreement, made by and between Sweetens Concrete Services, LLC

_____ hereinafter called the CONTRACTOR, and the Village of Twin Oaks, Missouri, hereinafter called the OWNER.

Now therefore, CONTRACTOR and OWNER, in consideration of mutual covenants herein set forth, agree as follows:

ARTICLE 1. CONTRACT PRICE

OWNER shall pay CONTRACTOR in current funds, for completion of the Work designated in Article 2 in accordance with the Contract Documents, an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work multiplied by the quantity of that item as indicated in the CONTRACTOR'S Bid, for the total amount of:

Forty-four thousand four hundred forty-four &
44/100

(in words)

(\$ 44,444.44)

(in figures)

ARTICLE 2. SCOPE OF THE WORK

Woodland Oaks Court Concrete Pavement & Village Curbing Repairs Project in the Village of Twin Oaks, Missouri.

ARTICLE 3. TIME OF COMPLETION

The CONTRACTOR shall commence operations after October 1, 2015, but not later than six (6) calendar days from October 1, 2015. Project to be completed no later than November 13, 2015. Project completion shall be defined as 100% completion of all items of the project including correction of deficiencies. Failure to complete the project within schedule will result in 1.5% of the cost of the project per day per Article 13 of this contract.

The rate of progress and the time of completion are essential conditions of this Contract. Liquidated damages will be charged as specified herein.

Should the CONTRACTOR, or in case of default, the surety fail to complete the work within the calendar days specified, a deduction of the amount will be made for each and every calendar day that the contract remains uncompleted in accordance with the requirements of ARTICLE 13 contained herein.

ARTICLE 4.

PAY QUANTITIES AND UNIT PRICES

The OWNER shall pay the CONTRACTOR for all work done on the basis of final computations for all work acceptably completed according to this Contract, at the unit price shown on the BID FORM for the quantity actually installed.

ARTICLE 5.

(BLANK)

ARTICLE 6.

FINAL PAYMENT AND ACCEPTANCE

Refer to Article 14 for payment schedule.

ARTICLE 7.

THE CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- a. This Owner-Contractors Agreement.
- b. Exhibits to the Owner-Contractor's Agreement (if any).
- c. General Requirements
- d. Performance and Payment Bonds.
- e. Notice of Award.
- f. Notice to Proceed.
- g. Drawings, if needed, with each sheet bearing the following general title:
**Woodland Oaks Court Concrete Pavement & Village Curbing Repairs Project
TWIN OAKS, MISSOURI**
- h. Bid Form.
- i. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents, which may be delivered or issued after the Effective Date of the Agreement, and are not attached hereto.

There are no Contract Documents other than those listed in this article. The Contract Documents may be amended, modified, or supplemented only in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by a Field Order, or ENGINEER'S written interpretation or clarification.

ARTICLE 8.

RATES OF PAY

The CONTRACTOR hereby agrees that the prevailing rates of pay shall be paid to skilled and unskilled labor employed under the terms of this contract. The CONTRACTOR shall forfeit to the OWNER ten (10) dollars for each workman employed, for each calendar day, or portion

thereof, such workman is paid less than the said stipulation rates for any work done under said contract, by him or by any subcontractor under him.

ARTICLE 9.

PERFORMANCE OF THE WORK

The CONTRACTOR, acting as an independent CONTRACTOR, shall furnish all supervision, labor, equipment, tools, materials, and supplies necessary to perform and shall perform all work in accordance with the Contract Documents and any applicable Owner ordinances, and state and federal laws. CONTRACTOR represents and warrants that he has special skills which qualify him to perform the Work in accordance with the Contract and that he is free to perform all such Work and is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work. The prime CONTRACTOR must perform, with its own organization, contract work amounting to not less than 40% of the total original contract.

ARTICLE 10.

SUPERVISION

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 Contract Documents give other specific instructions concerning those matters.

ARTICLE 11.

SAFETY

The OWNER and the ENGINEER may have personnel on the project site from time to time. All information and/or instructions shall be requested in writing by the CONTRACTOR and responded to in writing. No opinion or instructions will be given to the CONTRACTOR on safety.

The CONTRACTOR shall be solely responsible for the safety on and around the project site including shoring, ladders, drop cords, scaffolding, barricades, construction means, methods, techniques, sequences and procedures.

ARTICLE 12.

INDEMNITY

To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the OWNER, the OWNER'S REPRESENTATIVE, ENGINEER, their 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, including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the CONTRACTOR, a Subcontractor, or 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.

In claims against any person or entity indemnified under the above paragraph by an employee of the CONTRACTOR, a Subcontractor, or anyone directly or indirectly employed by them or anyone whose acts they may be liable, the indemnification obligation under this paragraph 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' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the CONTRACTOR under this Section shall not extend to the liability of the ENGINEER, the OWNER'S REPRESENTATIVE, the ENGINEER'S consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions, after requested in writing by the CONTRACTOR, or instructions by the ENGINEER, the OWNER'S REPRESENTATIVE, the ENGINEER'S consultants, and agents and employees of any of them provided such instructions or failure to give is the primary cause of the injury or damage.

ARTICLE 13.

LIQUIDATED DAMAGES

Whenever time is mentioned in this contract, time shall be and is of the essence of this contract. The OWNER would suffer loss should the CONTRACTOR fail to have the work embraced in this contract fully completed on or before the time above specified: THEREFORE, in order to adjust satisfactorily the damage on account of such failure, and the parties hereto realizing that it might be impossible to compute accurately or estimate the amount of such loss or damages which the OWNER would sustain by reason of failure to complete fully said work within the time required by this contract, the CONTRACTOR hereby covenants and agrees to pay the OWNER, as and for liquidated damages for each and every calendar day during which work remains incomplete and unfinished. Any sum which may be due the OWNER for such damages shall be deducted and retained by the OWNER from any balance which may be due the CONTRACTOR for progress payments or when said work shall have been finished and accepted. But such provisions shall not release the bond of the CONTRACTOR from liability according to its terms. In case of failure to complete, the OWNER will be under no obligation to show or prove any actual or specific damage.

Therefore, the CONTRACTOR will be charged with liquidated damages specified in the amount of **1.5% of the total contract amount** per calendar day for each full day that all work for the **Woodland Oaks Court Concrete Pavement & Village Curbing Repairs Project, in the Village of Twin Oaks, Missouri**, is not completed, and in working order to the satisfaction of the Owner and the Village of Twin Oaks, Missouri, in excess of the limitation as specified elsewhere in this special provision. It shall be the responsibility of the OWNER or its ENGINEER to determine the quantity of excess days.

ARTICLE 14.

PAYMENT TERMS

Contractor will be paid after submitting a monthly invoice for work completed and confirmation of that completed work by the Engineer or Village.

ARTICLE 15.

TERMINATION BY OWNER OR CONTRACTOR

(a) If the CONTRACTOR is adjudged to be bankrupt, or if the CONTRACTOR makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the CONTRACTOR's insolvency, or if the CONTRACTOR fails, except in cases for which extension of time is provided, to make progress in accordance with the Construction Schedule, or if the CONTRACTOR fails to make prompt payment to Subcontractors or prompt payment for material or labor, or disregards laws, ordinances or the instructions of the OWNER, or otherwise breaches any provision of the Contract, the OWNER may, without prejudice to any other right or remedy, terminate the Contract by giving written notice to the CONTRACTOR and his surety. Upon such notification the OWNER shall be entitled to take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the OWNER may deem expedient, which may include, but is not limited to, the OWNER itself completing the work or the OWNER hiring others to complete said work. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed the expenses of finishing the Work, including additional engineering, architectural, managerial and administrative expenses, and liquidated damages, such excess shall be paid to the CONTRACTOR. If such expenses and damages exceed the unpaid balance of the Contract Sum, the CONTRACTOR shall pay the difference to the OWNER promptly upon demand. In the event of termination pursuant to this paragraph, the CONTRACTOR, upon the request of the OWNER, shall promptly:

- (i) assign to the OWNER in the manner and to the extent directed by the OWNER all right, title and interest of the CONTRACTOR under any subcontracts, purchase orders and construction equipment leases to which the CONTRACTOR is a party and which relate to the Work or to construction equipment required therefore, and
- (ii) make available to the OWNER to the extent directed by the OWNER all construction equipment owned by the CONTRACTOR and employed in connection with the Work.

(b) Performance of the Work hereunder may be terminated by the OWNER by giving three (3) days prior written notice to the CONTRACTOR if the OWNER, in its sole discretion, decides to discontinue or suspend construction. In the event of such termination, as opposed to termination pursuant to paragraph (a) of this Article 15, the Contract Sum shall be reduced in an equitable manner by agreement between the parties.

ARTICLE 16.

AUDIT CLAUSE

Examination of Records

The CONTRACTOR's records which shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontractor files, indirect cost records, overhead allocation records, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to this contract shall be open to inspection and subject to audit and/or reproduction by the Owner Auditor, or a duly authorized representative from the OWNER, at the OWNER's expense. The CONTRACTOR shall preserve all such records for a period of three years, unless permission to destroy them is granted by the OWNER, or for such longer period as may be required by law,

after the final payment. Since the CONTRACTOR is not subject to the Missouri Sunshine Law (Chapter 610, RSMo), information regarding the CONTRACTOR's operations obtained during audits will be kept confidential.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in four (4) original counterparts as of the day and year last written below.

Executed by the OWNER this _____ day of _____, 20_____.

Executed by Sweetens Concrete Services (CONTRACTOR) this 21st day of September, 2015.

CONTRACTOR Carole Sweeten
Carole Sweeten

President

Karey
Secretary

VILLAGE OF TWIN OAKS, MISSOURI

Ray Slama
Ray Slama

Chairman, Board of Trustees

ATTEST Kathy A. Runge
Kathy Runge

Clerk/Controller



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FILE COPY

Performance Bond

Bond Number: 2293342

CONTRACTOR:

(Name, legal status and address)

Sweetens Concrete Services, LLC
207 E Koenig St
Wentzville, MO 63385-1521

SURETY:

(Name, legal status and principal place of business)

West Bend Mutual Insurance Company
8401 Greenway Blvd, Ste 1100
Middleton, WI 53562

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.

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

OWNER:

(Name, legal status and address)

Village of Twin Oaks
1393 Big Bend Rd Ste F
Ballwin

MO 63021-7601

CONSTRUCTION CONTRACT

Date: 09/16/2015

Amount: \$ 44,444.44

Description:

(Name and location)

Slab & Curb Replacement

BOND

Date: 10/15/2015

(Not earlier than Construction Contract Date)

Amount: \$ 44,444.44

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

Sweetens Concrete Services, LLC

Signature: *[Signature]*

Name and *CRISTIN BERENDSEN*

Title: *OFFICE MGR.*

SURETY

Company: *(Corporate Seal)*

West Bend Mutual Insurance Company

Signature: *[Signature]*

Name and Ken Fontana

Title: Attorney-In-Fact

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

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

ST. CHARLES INSURANCE
4600 EXECUTIVE CENTER PARKWAY
ST PETERS, MO 63376

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Init.

§ 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 the 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.

Init.

§ 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.

Init.

§ 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:

(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: _____

Init.

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User Notes:

(1633904212)



Document A312™ - 2010

Payment Bond

Bond Number: 2293342

CONTRACTOR:

(Name, legal status and address)

Sweetens Concrete Services, LLC
207 E Koenig St
Wentzville, MO 63385-1521

SURETY:

(Name, legal status and principal place of business)

West Bend Mutual Insurance Company
8401 Greenway Blvd, Ste 1100
Middleton, WI 53562

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.

OWNER:

(Name, legal status and address)

Village of Twin Oaks
1393 Big Bend Rd Ste F
Ballwin

MO 63021-7601

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.

CONSTRUCTION CONTRACT

Date: 09/16/2015

Amount: \$ 44,444.44

Description:

(Name and location)

Slab & Curb Replacement

BOND

Date: 10/15/2015

(Not earlier than Construction Contract Date)

Amount: \$ 44,444.44

Modifications to this Bond:

None

See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Sweetens Concrete Services, LLC

Signature:

Name and Title: KRISTIN BERENDZEN
OFFICE MGR.

SURETY

Company: (Corporate Seal)

West Bend Mutual Insurance Company

Signature:

Name and Title: Ken Fontana
Attorney-In-Fact

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

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

ST. CHARLES INSURANCE
4600 EXECUTIVE CENTER PARKWAY
ST PETERS, MO 63376

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party.)

Init.

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User Notes:

(1983340901)

§ 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 Section 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 tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 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,

- 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
- 2 have sent a Claim to the Surety (at the address described in Section 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 Section 13).

§ 6 If a notice of non-payment required by Section 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 Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 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 Section 7.1 or Section 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 Section 7.1 or Section 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 Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed 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.

Init.

§ 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 Section 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) or (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 request 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 "labor, materials or equipment" that part of 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.

Init.

§ 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:

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

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____

(Corporate Seal)

Company: _____

(Corporate Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____

Address: _____

Address: _____

Init.

Power of Attorney

Know all men by these Presents, That West Bend Mutual Insurance Company, a corporation having its principal office in the City of West Bend, Wisconsin does make, constitute and appoint:

Ken Fontana

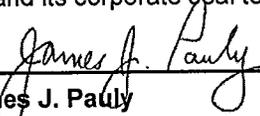
lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf as surety and as its act and deed any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of: Seven Million Five Hundred Thousand Dollars (\$7,500,000)

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of West Bend Mutual Insurance Company at a meeting duly called and held on the 21st day of December, 1999.

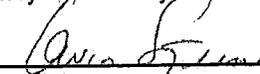
Appointment of Attorney-In-Fact. The president or any vice president, or any other officer of West Bend Mutual Insurance Company may appoint by written certificate Attorneys-in-Fact to act on behalf of the company in the execution of and attesting of bonds and undertakings and other written obligatory instruments of like nature. The signature of any officer authorized hereby and the corporate seal may be affixed by facsimile to any such power of attorney or to any certificate relating therefore and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the company in the future with respect to any bond or undertaking or other writing obligatory in nature to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any said officer at any time.

In witness whereof, the West Bend Mutual Insurance Company has caused these presents to be signed by its president undersigned and its corporate seal to be hereto duly attested by its secretary this 1st day of March, 2009.

Attest

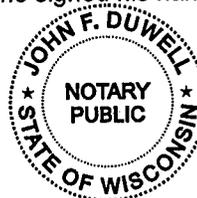

James J. Pauly
Secretary

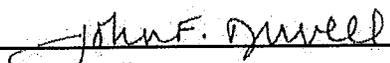



Kevin A. Steiner
Chief Executive Officer / President

State of Wisconsin
County of Washington

On the 1st day of March, 2009 before me personally came Kevin A. Steiner, to me known being by duly sworn, did depose and say that he resides in the County of Washington, State of Wisconsin; that he is the President of West Bend Mutual Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.




John F. Duwell
Executive Vice President - Chief Legal Officer
Notary Public, Washington Co. WI
My Commission is Permanent

The undersigned, duly elected to the office stated below, now the incumbent in West Bend Mutual Insurance Company, a Wisconsin corporation authorized to make this certificate, Do Hereby Certify that the foregoing attached Power of Attorney remains in full force effect and has not been revoked and that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at West Bend, Wisconsin this 15 day of October, 2015

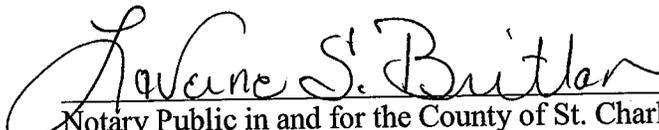



Dale J. Kent
Executive Vice President -
Chief Financial Officer

State of Missouri

County of St. Charles

On this 15th day of October, 2015 before me, LaVerne S. Brittan, a Notary Public in and for the said County of St. Charles, State of Missouri, residing therein, duly commissioned and sworn, personally appeared Ken Fontana, known to me to be the Attorney-in-Fact of West Bend Mutual Insurance Company, the corporation that executed the written instrument.


Notary Public in and for the County of St. Charles, State of Missouri. My Commission Expires on November 8, 2018

