

Tender and Release Agreement

This Tender and Release Agreement (“Agreement”) is made and entered into by and between Liberty Mutual Insurance Company (“Surety”), Jackson County, Missouri (“Obligee”) and Radmacher Brothers Excavating Co., Inc. (“Completion Contractor”).

RECITALS

A. Phillips Hardy, Inc. (“Principal”) entered a contract with Obligee for Jackson County Project 3228, Contract No. 24-037 Construction Services for the Buckner Tarsney Road Bridge Replacement over Prairie Creek (“Project”). That construction contract, together with all of its incorporated documents including but not limited to the original bid documents, plans, specifications, modifications and amendments, constitutes the “Original Contract.” The Original Contract is incorporated into and made a part of this Agreement.

B. In connection with the Original Contract between Principal and Obligee, Surety executed and delivered to Obligee a Performance Bond No. 674215955 in the amount of \$1,347,099.00 (the “Bond”).

C. On February 5, 2025, Principal notified Obligee that it was unable to complete the Project and waived any applicable cure period or any other contractual provision required under the Original Contract prior to the Obligee’s termination of the Contract.

D. Obligee and Surety by this Agreement declare a default and termination of Principal and Obligee calls on Surety to fulfill its Bond obligations to complete the Project in accordance with this Agreement.

E. The term “Completion Contract” as used in this Agreement is a separate construction contract between Obligee and Completion Contractor for the completion of the construction of the Project.

F. Pursuant to the Completion Contract, the Completion Contractor has agreed to: (1) satisfy all of the remaining obligations of the Original Contract in completion of the Project; and (2) furnish to Obligee payment and performance bonds to guarantee Completion Contractor’s performance of the Completion Contract;

G. It is expressly acknowledged and agreed that no Contract Funds of any nature are due or to become due to Principal by virtue of the termination, as those Contract Funds shall be disbursed in accordance with this Agreement. The summary of Contract Funds as of the date of this Agreement is as follows:

Original Contract Price		\$1,347,099.00	
Change Orders		\$0	
Total Adjusted Original Contract Price		\$1,347,099.00	
Total Complete and Stored		\$0	
Earned Retainage	\$0		
Amount Paid to Principal		\$0	
Total Available Contract Balance (including retainage)		\$1,347,099.00	
Completion Contractor Price		\$1,586,594.18	
Contract (Shortfall) or Remaining Balance		(\$239,495.18)	

H. To fulfill its Bond obligations, Surety tenders the Completion Contractor to Obligee and arranges for Obligee to enter into the Completion Contract (as defined above) with Completion Contractor pursuant to the terms in this Agreement.

COVENANTS

In consideration of the terms and conditions in this Agreement, the parties agree as follows:

1. The above Recitals are contractual and incorporated into these Covenants.
2. Completion Contractor has examined the Original Contract and certifies that it is familiar with the terms and conditions of the Original Contract. Completion Contractor diligently investigated and inspected the Project jobsite and is familiar with the jobsite conditions including: the materials available but not yet incorporated into the Project, the nature and status of work previously performed by Principal and the work remaining to be performed on the Original Contract. Completion Contractor hereby confirms that it has investigated and is informed as to the status and conditions affecting the work to be done and that no representations with respect to same have been made by Surety, Obligee, or any of their representatives. Surety has made no warranties or representations, express or implied, to Completion Contractor with respect to the original Contract or the Project. Completion Contractor has considered all of the Original Contract documents and jobsite conditions and observations in reaching its Completion Contractor Price of \$1,586,594.18, as detailed on Exhibit A hereto and which includes the list of subcontractors for the Project. This Agreement shall not be effective unless and until Completion Contractor shall execute in writing sufficient documentation to bind itself to Obligee for completion of the work under the Original Contract for the Project (the "Completion Contract"), issue new performance

and payment bonds in the amount equal to 100% of the value of the completion work and provide certificates of Insurance as required in the Original Contract.

3. Surety shall pay the Contract Shortfall in the amount of \$239,495.18 to Oblige within fourteen (14) business days of the execution of this Agreement. The Contract Balance in the amount of \$1,347,099.00 shall be paid directly to Completion Contractor by Oblige for performance of the work under the Completion Contract.

4. Radmacher Brothers Excavating Co., Inc. is tendered by Surety to Oblige as Completion Contractor under this Agreement. Completion Contractor agrees to enter the Completion Contract with Oblige to fully perform the Original Contract in accordance with all Completion Contract requirements. Oblige recognizes the Completion Contractor as Principal's successor in interest to the Original Contract.

5. Completion Contractor shall furnish to Oblige a Performance Bond in the amount of \$1,586,594.18 issued by a commercial surety which satisfy the requirements included in the Original Contract. The Completion Contractor shall furnish that bond on forms designated by the Oblige within five (5) calendar days of executing this Agreement. The Completion Contractor shall perform all work described in the Completion Contract. The Completion Contractor warrants all work performed under the Completion Contract according to the warranty terms of the Original Contract.

6. Completion Contractor's Exhibit A hereto includes the list of subcontractors for the Project. Completion Contractor's price to complete the work in the amount of \$1,586,694.18 includes sufficient amounts to pay the listed subcontractors and suppliers for all preconstruction work such entities have already performed on the Project. Completion Contractor warrants it has included all cost to complete the Project in its price, including any and all amounts owed, to the extent they relate to this Project, to the subcontractors and suppliers listed in Exhibit A that the Completion Contractor has noted will be used.

7. Oblige may direct Completion Contractor to perform extra, additional or changed work or to delete work ("change order") pursuant to the terms of the Original Contract. In no event shall any change order issued by the Oblige to the Completion Contractor effect or alter the penal sum limit of the Surety's Bond and in no event shall Surety be liable for the costs of any such change order work.

8. Upon receipt of the Contract Shortfall payment in the amount of \$239,495.18, Oblige expressly RELEASES, ACQUITS AND FOREVER DISCHARGES Surety from any and all claims, rights, demands or causes of action of whatever kind or nature whether in law or equity or otherwise which Oblige has or may ever have against Surety under or by reason of the Bond with the exception that the Bond will remain in place for payment claims, if any, covered by the Bond that may be asserted by subcontractors or suppliers of Principal for the Project for work performed prior to the date of this Agreement. Surety retains all obligations, rights and defenses pursuant to the Bond. Surety's Bond shall not apply to or cover Completion Contractor or any of its Subcontractors and Suppliers for any work performed and/or materials delivered and Surety shall not be a co-surety with Completion Contractor's surety. All payments made by Surety relating to claims on its Bond shall be credited against and applied to reduce the penal sum limit of the Bond. Surety shall not, under any circumstances, be obligated to expend more than the penal sum limit of its Bond.

9. The Completion Contractor agrees to make demand and look solely and exclusively to the Obligee in the event of any breach or default by the Obligee of this Agreement.
10. Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Surety against Principal, including but not limited to, damages, costs, interest and attorney's fees arising out of or in connection with the Original Contract and the Project.
11. It is understood and agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Missouri.
12. In the case of conflict between the terms of this Agreement, the Bond, the Completion Contract and the Original Contract and with respect to the rights and obligations of the Surety, this Agreement has priority and shall control.
13. This Agreement may be independently executed in any number of counterparts each of which when executed and delivered, shall constitute an agreement which shall be binding upon all parties notwithstanding that the signatures of all parties and/or their designated representatives do not appear on the same page. Electronic signatures shall have the same effect as original signatures.
14. This Agreement has been drafted equally by all parties and shall not be subject to the rule of construction that a written agreement is construed against the party preparing or drafting the agreement.
15. This Agreement shall extend to and be binding on the parties, their respective successors, heirs and assigns.
16. This Agreement is fully integrated, and its incorporated documents constitute the complete agreement between the parties. No prior statements, oral or written, course of dealing or trade usage shall supplement or alter the terms of this Agreement. All discussions and prior agreements are merged herein. This Agreement replaces and supersedes any statements or representations the Surety, its consultants, agents, and/or attorneys have made to the Completion Contractor or Obligee.
17. Surety's actions under this Agreement and its Bond shall forever be construed and considered as those of a surety and not a contractor.
18. This Agreement is strictly for the benefit of the parties to this Agreement, and they expressly declare that they do not intend to confer any rights or benefit whatsoever on any third party.
19. Any notice, consent, approval, or other communication which is provided for or required by either the Contract or this Agreement must be in writing and may be delivered in person to any party or may be sent by a facsimile transmission, courier, or registered or certified U.S. mail, with postage prepaid, return receipt requested. E-mail is not an acceptable communication method. Any such notice or other written communication shall be deemed received by the party to whom it is sent (i) in the case of delivery by hand or delivery by reputable national or local courier (such as United Parcel Service or Federal Express), on the date of delivery to the party to whom such notice is addressed, (ii) in the case of facsimile transmission, one working day after the date of successful transmission (provided that an additional copy of such notice is subsequently received within three (3) days of the facsimile transmission using the methods in (i),

and in the case of registered or certified mail, the date receipt is acknowledged on the return receipt for such notice. All such notices and other written communication shall be sent to the persons and addresses listed below:

If to Obligee:

Jackson County Department of Public Works, Engineering Division
Attn: Ric Johnson
303 West Walnut St.
Independence, MO 64050

If to Surety:

Jeremy Medeiros
Liberty Mutual Surety
P.O. Box 34526
Seattle, WA 98124-1526

If to Completion Contractor:

Radmacher Brothers Excavating Co., Inc.
Attn:
2201 Mo-7
Pleasant Hill, MO 64080

The addresses and persons listed may be changed at any time by giving written notice in accordance with this Article.

20. The parties and their signatories warrant that each has the power and authority to execute this Agreement. The parties voluntarily executed this Agreement based on their own independent investigations. The provisions of this Agreement shall be interpreted in a manner consistent with each other to carry out the purposes and intentions of the parties. If for any reason any provision of this Agreement is held unenforceable or invalid, that provision shall be deemed severed from this Agreement and the remaining provisions shall not be affected.

Executed this ____ day of February, 2025.

OBLIGEE

Jackson County Public Works

By: _____

Printed Name: _____

Its: _____

SURETY

Liberty Mutual Insurance Company

By: _____

Printed Name: Jeremy Medeiros

Its: Senior Surety Counsel

COMPLETION CONTRACTOR

Radmacher Brothers Excavating Co., Inc.

By: _____

Printed Name: Robert C. Radmacher

Its: President_____