

## **Tender & Release Agreement**

This Tender & Release Agreement (this "Agreement") is made and entered into this \_\_\_\_ day of September, 2023, by and between the Becker Public Schools (ISD No. 726)("Obligee"), and West Bend Mutual Insurance Company ("Surety").

### **W I T N E S S E T H**

**WHEREAS**, Obligee entered into a written contract (the "Contract") dated the 21<sup>st</sup> day of September, 2022 with Senoma dba Century Construction ("Contractor") for work described as Becker Public Schools ISD No. 726 Becker Primary EEC (the "Project"), and

**WHEREAS**, Surety and Contractor, on or about the 22<sup>nd</sup> day of September, 2022, provided a statutory Performance Bond No. 2524748 (the "Performance Bond") in favor of Obligee to secure the performance obligations of Contractor under the Contract, and

**WHEREAS**, Surety and Contractor, on or about the 22<sup>nd</sup> day of September, 2022, provided a statutory Payment Bond No.2524748 in favor of Obligee to secure the payment obligations of Contractor to suppliers and subcontractors and

**WHEREAS**, on July 31, 2023, the principal sent a voluntary default notice to the obligee stating they could not complete the project as they were closing the business and the Obligee requested surety assistance

**WHEREAS**, on August 15, 2023, Obligee at the request of the Surety invited proposals for completion of the work remaining received bids from contractors, the most advantageous bid being that of Ebert Inc., dba Ebert Companies ("Bidder"), and

**WHEREAS**, there remains unpaid the sums of \$831,451.23 under the terms of the Contract between Contractor and Obligee for completion of the work remaining; and

**WHEREAS**, the bid of Bidder is in the sum of \$893,300.00; and

**WHEREAS**, Surety has agreed to tender to Obligee the bid of Bidder and release sufficient contract funds to satisfy Surety's performance obligations to Obligee; and

**WHEREAS**, because no new funds are being committed by Obligee for the performance of the Project, Obligee may lawfully accept Surety's tender of Bidder and enter into a new contract with Bidder without the formalities and requirements of the competitive biddings laws of the State of Minnesota;

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth herein, the payments herein recited, and other good and valuable consideration, the Obligee and Surety have agreed and do hereby agree as follows:

1. Surety hereby tenders to Obligee the bid of Bidder. Obligee agrees to enter into a contract with Bidder for the completion of the original Contract.

2. Surety agrees to release to the order of the Obligee, and Obligee agrees to accept, the sum of **\$66,848.77** in full and final settlement of all of Surety's obligations to Obligee under the Performance Bond; said sum representing the completion cost of the contract as well as any unforeseen items. Payment are as follows:

\$61,848.77 the difference between the remaining contract balance and the completion contractors cost to complete.

\$5,000.00 to cover any unforeseen costs.

3. Obligee and Surety further agree the remaining contract balance of \$831,451.23 will be used by the obligee to pay the completion contractor for completion of the original contract and as full satisfaction of any and all liquidated damages or any other claim against the contractor and surety.

5. The Obligee hereby releases and forever discharges Surety from any and all claims, demands, causes of action, damages, and/or expenses, known or unknown, arising out of or in any way related to the Contract and/or the Performance Bond, and

agrees to return the original of said Performance Bond marked "**CANCELLED**" conspicuously on the face thereof.

6. The Obligee, without recourse or warranty, hereby assigns, sells, and transfers and subrogates Surety to all of Obligee's rights, claims, causes of action, and demands against Contractor.

7. Surety agrees to investigate and discharge its liability under the statutory Payment Bond issued by it as to all lawful demands upon it by subcontractors and suppliers to Contractor for labor and material used, consumed and expended in connection with Contractor's Contract prior to its abandonment of the work on the Project.

8. The parties hereby confirm that this Agreement constitutes the entire terms of their agreement and further acknowledge that they have read and understand this Agreement constitutes a full, complete and final settlement and release and that each signatory is authorized to bind their perspective companies.

9. This Agreement shall be governed by the laws of the State of Minnesota

**OBLIGEE: Becker Public School ISD No. 726**

By: \_\_\_\_\_

Its:

**SURETY: West Bend Mutual Insurance Company**

By: \_\_\_\_\_

Its: Jimmy Sparks Senior Claims Attorney