



**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7017 6040 0001 0607 6105
FIRST CLASS MAIL AND EMAIL:
Tim.begley@crossville.gov**

February 12, 2019

Tim Begley, Director of Engineering
City of Crossville
392 N. Main St.
Crossville, TN 38555

Principal: Cantrell Construction Company
Obligee: City of Crossville, TN
Project: Airfield Pavement Rehabilitation at the Crossville Memorial
Airport, Crossville, TN
Bond No.: CBB47539
Claim No.: SB-18-0013

Dear. Mr. Begley:

As you are aware, National American Insurance Company ("NAICO") is the performance and payment bond surety concerning the referenced Project. NAICO received correspondence from Mrs. Jennifer Casterline with Atkins on October 15, 2018 alleging a default by the Principal, and further stating The City of Crossville's intent to terminate its contract with the Principal. Due to these allegations NAICO began its investigation which included a site visit, reviewing the bond/bond rider and understanding if the default and intent to terminate the Principal were proper. After its earlier investigation, NAICO determined its liability to The City of Crossville, and tendered that amount to The City of Crossville. This amount was not accepted and the City of Crossville opened the project back up for competitive bidding in January of 2019. The results of the competitive bidding are now in, and NAICO has taken those bids into account.

Any previous tenders by NAICO to the City of Crossville are hereby revoked. Based upon NAICO's investigation, which includes the second competitive bidding process, NAICO has determined its liability to The City of Crossville in the amount of \$76,984.07, and hereby tenders that amount to the City of

Crossville. This amount constitutes NAICO's calculation of its liability to the City of Crossville under the performance bond.

Enclosed is a Settlement Agreement NAICO requests the City of Crossville to execute by the proper official. I understand that the City Council will be having a special meeting on February 14, 2019 to discuss this matter. Once the Board has approved resolution of this matter, NAICO will issue payment to the City of Crossville and mail to your attention.

This offer of settlement should not be construed as an admission of liability on the part of NAICO or the Principal. Nothing said or unsaid in this or any other correspondence should be construed as a waiver.

Should you have any questions, please call me.

Sincerely,



James Malone
Claims Adjuster
405-258-4427
jmalone@NAICO.com

SETTLEMENT AGREEMENT AND RELEASE

This binding Settlement Agreement and Release (“Agreement”) is entered into on February ____, 2019 (the “date of this Agreement”) between the City of Crossville, TN (“City”), and National American Insurance Company (“NAICO” and, with City, the “Parties”).

WHEREAS, pursuant to a contract between City and Cantrell Construction Company, Inc. (“Cantrell”) dated September 5, 2018, to make certain improvements to Crossville Memorial Airport, the project being known as “Airfield Pavement Rehabilitation” at the Crossville Memorial Airport, Crossville, TN, TAD Project No. 18-555-0144-18 (the “Project”).

WHEREAS, on or about September 13, 2018, NAICO provided a Contract Bond, CBB47539 (the “Bond”) for penal amounts of \$608,130, with NAICO as surety, Cantrell as principal, and City as obligee.

WHEREAS, City claims that Cantrell is in default of the Contract and that Cantrell failed to timely and correctly complete the Contract scope.

WHEREAS, there is the potential that claims may be made by subcontractors and/or suppliers and as a result, NAICO will respond to any claims from subcontractors or suppliers of Cantrell for work performed or materials and supplies provided to and incorporated into the bonded contract.

WHEREAS, the Settlement Funds have accounted for and were credited with the remaining Contract balance of Six Hundred Eight Thousand One Hundred Thirty dollars (\$608,130) and therefore the Settlement Funds represent the amount of Surety’s liability to be paid under the Performance Bond.

WHEREAS, NAICO has previously required City to cease payment of Contract funds. City retains \$608,130 of the Contract funds and has not made any payments. After execution of this Agreement, the Contract funds may be used at the discretion of the City.

WHEREAS, as a material inducement for their respective consent to this Agreement, each Party declares, represents and warrants that:

- (a) each Party has discussed this Agreement with its attorneys and that it understands the terms of the Agreement and voluntarily accepts the Agreement;
- (b) each Party relies solely upon its own judgment, belief and knowledge of the nature, extent, and effect of its claimed injuries and damages and its own judgment, belief and knowledge of all facts relating to its respective claims and, therefore, does not rely upon any statement or representation

by any other Party, third party or any of their respective representatives;

- (c) each Party may in the future discover facts, injuries or damages different from or in addition to those which it may now know or believe to be true with respect to the matters that are the subject of this Agreement, and agrees that this Agreement shall remain in effect in all respects, notwithstanding the discovery or existence of different or additional facts, injuries or damages; and
- (d) no promise, enticement or agreement not expressed in this Agreement has been made by any Party or their respective representatives.

NOW THEREFORE, in consideration of the promises and the undertakings of the Parties hereto, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated into and form a part of this Agreement.

2. Settlement Funds. In consideration of the covenants and obligations contained in this Agreement, NAICO shall pay to City the total amount of Seventy-Six Thousand Nine Hundred Eighty-Four dollars and Seven cents (\$76,984.07) ("Settlement Funds"), within 21 days after the Effective Date, as defined below, of this Agreement.

3. Ownership of Claims. The Parties represent and warrant to each other that each is authorized to enter into this Agreement and that each owns and has not sold, pledged, hypothecated, signed or transferred any claim being released, and agrees to indemnify and hold the other Parties harmless from any claim inconsistent with the foregoing representation and warranty that may be asserted by any person or entity.

4. City's Release of NAICO. Upon timely receipt of all Settlement Funds, City for itself and any and all respective current and former partners, affiliates, employees, agents, attorneys, predecessors, successors, assigns, subrogees, trustees, creditors, sureties, and assigns, releases and forever discharges NAICO and its respective current and former partners, affiliates, subsidiaries, parents, shareholders, members, directors, officers, employees, agents, attorneys, predecessors, successors, and assigns, absolutely and forever, of and from any and all claims, causes of action, injuries, losses, costs, or damages, including attorneys' fees of any kind whatsoever, whether currently known or anticipated, or currently unknown or unanticipated, but which may later result or be discovered, arising from or related in any manner to the performance of Cantrell's work on the Project and obligations under the Contract as related to Cantrell's default and performance. Notwithstanding the foregoing, and explicitly reserved from City's release of NAICO are claims from subcontractors, materialmen or suppliers of Cantrell for work performed or materials provided to and incorporated into the bonded contract.

5. NAICO/Cantrell Indemnity Agreement. This Agreement shall have no effect or alter any provision or obligation under the General Indemnity Agreement between NAICO, Cantrell and other indemnitors.

6. No Admission of Liability. This Agreement constitutes a compromise of disputed claims. Nothing contained herein shall be construed as an admission as to the truth or accuracy of any allegation, claim or demand by any Party. This Agreement and the negotiations leading thereto are not evidence or admissions by any Party of any issue of fact or law, and are not admissible into evidence for any purposes except to obtain approval of or to enforce or interpret this Agreement. The execution of this Agreement is not an admission on the part of any Party of any liability, or fault whatsoever, and the Parties hereby deny any liability or fault.

7. The Parties agree that this Agreement is the product of negotiation. Thus, it cannot be construed for or against any Party hereto because of authorship.

8. The Parties each acknowledge that the undersigned representatives have proper authority to enter and execute this Agreement on behalf of the Parties hereto.

9. This Agreement may be executed in one or more counterparts including facsimile copies, and all such counterparts taken together shall constitute one complete instrument.

10. This Agreement constitutes the Parties' entire Agreement with respect to the matters addressed herein and supersedes any prior or contemporaneous oral promises or representations between or among them or the matters addressed herein. The Parties expressly represent and warrant that they have had the opportunity to review this Agreement with counsel and are not relying upon statements, promises, or representations, other than contained in this Agreement. However, this Agreement shall not constitute a waiver, modification, amendment, change, or limitation on NAICO's ability to enforce its rights under the General Indemnity Agreement.

11. No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or have any force or effect unless made in writing and signed by the Parties.

12. No failure to exercise and no delay in exercising any right, remedy or power under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any right, remedy, or power provided herein by law or in equity.

13. This Agreement shall be effective on the date it is signed by the last signatory hereto ("Effective Date").

14. The provisions of this Agreement shall be deemed to bind, obligate and extend to, and inure to the benefit of, the Parties hereto, and upon their successors, assigns, acquirers, transferees, grantees, affiliates, officers, directors, managers, shareholders, members, agents, servants, employees and representatives of each Party hereto, including those who may assume any or all of the above-described capacities subsequent to the execution of this Agreement.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement on the date set forth below, intending to be bound by their obligations as set forth herein.

National American Insurance Company

City of Crossville, TN

Name:

Title:

Name:

Title:

Date

Date