

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Federal Highway Administration (“FHWA”), an operating administration of the U.S. Department of Transportation (collectively the "United States"), and Dave O’Mara Contractor, Inc., Padgett Trucking, Inc., Dave O’Mara Paving, Inc., David J. O’Mara, Nancy A. O’Mara, Amy L. Boswell, Robert L. O’Mara and Daniel J. O’Mara (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Dave O’Mara Contractor, Inc. (“DOCI”) is a construction company with its principal place of business in North Vernon, Indiana. Its specialties include highway construction, asphalt paving construction and exterior concrete construction. It frequently enters into contracts with the Indiana Department of Transportation (“INDOT”) to pave roads, including roads that are ultimately funded in large part by the federal government through the FHWA.

B. Padgett Trucking, Inc. and Dave O’Mara Paving, Inc. (hereafter, “DOCI Affiliates”) are affiliates of DOCI that also have their principal place of business in North Vernon, Indiana. Padgett Trucking, Inc. provides trucking services and Dave O’Mara Paving, Inc. manages asphalt plants. Both of these entities are agreeing in this settlement agreement to pay a portion of the settlement amount owed to the United States (and guaranteed to be paid by their affiliate, DOCI), in order to reduce DOCI’s obligations to the United States.

C. David J. O'Mara, Nancy A. O'Mara, Amy L. Boswell, Robert L. O'Mara and Daniel J. O'Mara (hereafter collectively referred to as the "DOCI Shareholders") are individuals who reside in the state of Indiana. All of these individuals are shareholders of DOCI and all are agreeing in this settlement agreement to pay a portion of the settlement amount owed to the United States (and guaranteed to be paid by DOCI), in order to reduce DOCI's obligations to the United States.

D. The United States maintains that it has civil claims against DOCI arising from the Covered Conduct as defined below.

E. The United States contends that DOCI caused claims for payment to be submitted by INDOT to the FHWA in connection with the paving of roads, pursuant to contracts into which DOCI entered with INDOT.

F. The United States contends that from February 6, 2008 to December 10, 2014, DOCI caused the submission of false and fraudulent claims to FHWA in connection with the paving of highways and other roads that were funded by both federal and state money. Specifically, DOCI knowingly made misrepresentations to INDOT in seeking payments for its road paving services, thereby causing INDOT to request and obtain payment from FHWA for the federal share of the work done on those roadways. DOCI represented that its hot mix asphalt mixture met INDOT's required minimum amount of binder or glue that would hold the mix together when, in fact, DOCI frequently failed to meet such minimum levels for the base and intermediate levels of asphalt in the roads it paved. DOCI was able to mislead the government by reporting to INDOT that it was using slag – an especially heavy mineral – in situations where no material amounts of slag was used, thereby creating the impression that its mixture was

heavier than it really was and required less binder than the roads truly needed to make them last a reasonable period of time before which they would develop cracks and become unsafe to drive on. The conduct described in this Paragraph and in Paragraph E is collectively referred to below as the Covered Conduct.

G. This Settlement Agreement is neither an admission of liability by DOCI nor a concession by the United States that its claims are not well founded.

H. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. DOCI shall pay and/or guarantee the payment to the United States of four million two hundred fifty two thousand seven hundred thirty six dollars (\$4,252,736.00) (Settlement Amount), which constitutes restitution to the United States, by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Southern District of Indiana. The payments shall be made as follows:

a. Pursuant to a promissory note in the form attached hereto as Exhibit A, DOCI shall make five equal payments of one hundred eighty one thousand three hundred seventeen dollars and seventy eight cents (\$181,317.78) per payment – for a total for the five payments of nine hundred six thousand five hundred eighty eight dollars and ninety cents (\$906,588.90). The first such payment shall be due no later than ten days after the Effective Date of this Agreement, and the remaining four payments shall be due precisely 12, 24, 36 and 48 months, respectively, after the due date of the initial payment.

b. Pursuant to a promissory note in the form attached hereto as Exhibit B, each of the five O'Mara Shareholders shall make five equal payments of seventy nine thousand four hundred fifty dollars and fifty five cents (\$79,450.55) – for a total for the five payments of three hundred ninety seven thousand two hundred fifty two dollars and seventy five cents (\$397,252.75) per shareholder, or one million nine hundred eighty six thousand two hundred sixty three dollars and seventy five cents (\$1,986,263.75) for the DOCI Shareholders taken in the aggregate. For each of the DOCI Shareholders, the first such payment shall be due no later than ten days after the Effective Date of this Agreement, and the remaining four payments shall be due precisely 12, 24, 36 and 48 months, respectively, after the due date of the initial payment. The DOCI Shareholders shall be jointly and severally liable for the full amount owed by all five of the DOCI Shareholders, and each DOCI Shareholder hereby agrees to make any payment required of any of the other DOCI Shareholders under this subparagraph if that payment is not made when due. In addition, pursuant to a guarantee in the form attached hereto as Exhibit C, DOCI guarantees to make any payment required by this subparagraph if the payment is not made when due.

c. Pursuant to a promissory note in the form attached hereto as Exhibit D (the "DOCI Affiliates' Note"), Padgett Trucking, Inc., shall make five equal payments of one hundred fifty eight thousand six hundred fifty three dollars and six cents (\$158,653.06) – for a total for the five payments of seven hundred ninety three thousand two hundred sixty five dollars and thirty cents (\$793,265.30). Moreover, pursuant to the DOCI Affiliates' Note, Dave O'Mara Paving, Inc. shall make five equal payments of one hundred thirteen thousand three hundred twenty three dollars and sixty one cents

(\$113,323.61) – for a total for the five payments of five hundred sixty six thousand six hundred eighteen dollars and five cents (\$566,618.05). The aggregate amount to be paid by these two DOCI Affiliates shall be one million three hundred fifty nine thousand eight hundred eighty three dollars and thirty five cents (\$1,359,883.35). For each of the DOCI Affiliates, the first required payment shall be due no later than ten days after the Effective Date of this Agreement, and the remaining four payments shall be due precisely 12, 24, 36 and 48 months, respectively, after the due date of the initial payment. The DOCI Affiliates shall be jointly and severally liable for the full amount owed by both of the DOCI Affiliates, and each DOCI Affiliate hereby agrees to make any payment required of any of the other DOCI Affiliates under this subparagraph if that payment is not made when due. Similarly, pursuant to the guarantee attached hereto as Exhibit E, DOCI guarantees to make any payment required by this subparagraph if the payment is not made when due.

d. The payment obligations undertaken by the DOCI Shareholders shall be partially secured by a letter of credit in the amount of seven hundred fifty thousand dollars (\$750,000.00), in the form of Exhibit F, which the DOCI Shareholders agree to cause to be issued contemporaneously with this Settlement Agreement. In addition, the payment obligations undertaken by the DOCI Affiliates shall be partially secured by a letter of credit in the amount of six hundred thousand dollars (\$600,000.00) in the form of Exhibit G, which the DOCI Affiliates agree to cause to be issued contemporaneously with this Settlement Agreement.

e. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct due

solely to DOCI's financial condition as reflected in the Financial Statements referenced in Paragraph 4 below.

(1) In the event that the United States does not receive any of the payments required by Subparagraphs 1.a through 1.c when due, or in the event that either the DOCI Shareholders or the DOCI Affiliates fail to maintain the respective letter of credit referenced in Subparagraph 1.d on the terms set forth in that Subparagraph throughout the time that (i) money is available to be drawn on that respective letter of credit and (ii) they continue to have payment obligations to the United States pursuant to this Settlement Agreement, DOCI shall be in Default of DOCI's payment obligations ("Default"). The United States shall provide written Notice of Default, and both DOCI and/or whichever other individual or entity who failed to make the required payment or maintain the required letter of credit shall have an opportunity to cure such Default within fourteen (14) calendar days from the date of receipt of the Notice of Default by making the payment due. Notice of Default will be delivered to DOCI, or to such other representative as DOCI shall designate in advance, in writing. If DOCI and/or whichever other individual or entity caused the Default fail to cure the Default within fourteen (14) days of DOCI's receipt of the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable by DOCI, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total. The DOCI Shareholders and DOCI Affiliates shall retain whatever payment obligations they undertook pursuant to Paragraphs 1.b. and 1.c., provided that to the

extent the United States recovers any money in satisfaction of those payment obligations pursuant to Subparagraph 1.d, those obligations shall be reduced accordingly.

(2) In the event of Uncured Default, DOCI agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and bring any civil and/or administrative claim, action, or proceeding against DOCI for the claims that would otherwise be covered by the releases provided in Paragraph 2 below, with any recovery reduced by the amount of any payments previously made by DOCI or any of the DOCI Affiliates or Shareholders to the United States under this Agreement or recoverable under Subparagraph 1.d; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to DOCI and or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, DOCI agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this Paragraph, DOCI waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the United States within 120 calendar days of written notification to DOCI

that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on April 9, 2018. DOCI agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and subject to Paragraph 4 (concerning disclosure of assets), Subparagraph 1.e. (concerning default), and Paragraph 10 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, the United States releases DOCI, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners insofar as they are corporations rather than individuals; and the corporate successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the releases given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. DOCI has provided sworn financial disclosure statements (Financial Statements) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. DOCI warrants that the Financial Statements are complete, accurate, and current. If the United States learns of asset(s) in which DOCI had an interest of any kind at the time of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy DOCI's obligations under this Agreement) that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by DOCI on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$200,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based

on the Covered Conduct, or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the value of the net worth of DOCI's previously undisclosed assets. DOCI agrees not to contest any collection action undertaken by the United States pursuant to this provision, and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph rescinds this Agreement, DOCI waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to DOCI that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on April 9, 2018.

5. In the event that the United States, pursuant to Paragraph 4 (concerning disclosure of assets), above, opts to rescind this Agreement, DOCI agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to DOCI that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on April 9, 2018.

6. DOCI waives and shall not assert any defenses DOCI may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the

Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. DOCI fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that DOCI has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of DOCI, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) DOCI's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment DOCI makes to the United States pursuant to this Agreement and any payments that the DOCI Affiliates

or Shareholders make to the United States pursuant to this Agreement

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by DOCI, and DOCI shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, DOCI shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by DOCI or any of its subsidiaries or affiliates from the United States. DOCI agrees that the United States, at a minimum, shall be entitled to recoup from DOCI any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine DOCI's books and records and to disagree with any calculations submitted by DOCI or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by DOCI, or the effect of any such Unallowable Costs on the amount of such payments.

9. DOCI agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, DOCI shall encourage, and agrees not to impair, the cooperation of its directors,

officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. DOCI further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

10. In exchange for valuable consideration provided in this Agreement, DOCI acknowledges the following:

a. DOCI warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to DOCI, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which DOCI was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If DOCI's obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code), or if, before the Settlement Amount is paid in full, DOCI or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of DOCI's debts, or to adjudicate DOCI as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for DOCI or for all or any substantial part of DOCI's assets:

(1) The United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against DOCI for the claims that would otherwise be covered by the releases provided in Paragraph 2 above;

(2) The United States has an undisputed, non-contingent, and liquidated allowed claim against DOCI in the amount of twenty three million five hundred thousand dollars (\$23,500,000), less any payment received pursuant to this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by DOCI, a receiver, trustee, custodian, or other similar official for DOCI; and

(3) DOCI agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under this Paragraph is not subject to

an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. DOCI shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). DOCI waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within one hundred twenty (120) calendar days of written notification to DOCI that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on April 9, 2018.

11. This Agreement is intended to be for the benefit of the Parties only.

12. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Indiana. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

15. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

16. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

18. This Agreement is binding on DOCI's, the DOCI Affiliates' and the DOCI Shareholders' successors, transferees, heirs, and assigns.

19. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

20. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: September 10, 2020

BY: Daniel A. Spiro
Daniel A. Spiro
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: September 8, 2020

BY: Rachana N. Fischer
Rachana N. Fischer
Assistant United States Attorney
Southern District of Indiana

DAVE O'MARA CONTRACTOR, INC.

DATED: September 8, 2020 BY: David J. O'Mara
David J. O'Mara
President

DATED: September 8^{10 M.}, 2020 BY: Marc S. Murphy
Marc S. Murphy
Counsel for Dave O'Mara Contractor, Inc.

PADGETT TRUCKING, INC.

DATED: September 8, 2020 BY: David J. O'Mara
David J. O'Mara
President

DAVE O'MARA PAVING, INC.

DATED: September 8, 2020 BY: Daniel J. O'Mara
Daniel J. O'Mara
Vice President

SHAREHOLDERS

DATED: September 8, 2020 David J. O'Mara
David J. O'Mara

DATED: September 8, 2020 Nancy A. O'Mara
Nancy A. O'Mara

DATED: September 8, 2020 Amy L. Boswell
Amy L. Boswell

DATED: September 8, 2020 Robert L. O'Mara
Robert L. O'Mara

DATED: September 8, 2020 Daniel J. O'Mara
Daniel J. O'Mara

EXHIBIT A

PROMISSORY NOTE

1. For value received, and pursuant to a Settlement Agreement dated September ____, 2020 (Effective Date) attached hereto (Settlement Agreement), Dave O'Mara Contractor, Inc., an Indiana corporation (Maker), for itself and its successors and assigns, promises to pay to the United States of America (Holder), or its assignee, the full principal sum of nine hundred six thousand five hundred eighty-eight dollars and ninety cents (\$906,588.90) (Outstanding Balance), without interest, as set forth below.

The Maker shall pay to the Holder the Outstanding Balance in five equal payments of one hundred eighty-one thousand three hundred seventeen dollars and seventy-eight cents (\$181,317.78). The first such payment shall be due no later than ten days after the Effective Date, and each of the remaining four payments shall be due precisely 12, 24, 36 and 48 months, respectively after the due date of the initial payment.

2. Payments will be made by wire transfer as indicated in the Settlement Agreement. If there is any change in the method or instructions of payment, the Holder shall inform the Maker at least fourteen (14) days before payment is due.

3. This Note may be prepaid, in whole or in part, without penalty or premium.

4. Maker is in default of this Note on the date of occurrence of any of the following events (Events of Default).

A. Maker's failure to pay any amount provided for in this Note within fourteen (14) days of the Holder's notice to the Maker of a failure to make such payment when due and payable; provided, however, that an Event of Default does not occur if because of events outside of Maker's control, the Holder does not receive the paid amount after transmission by Maker. Maker will make its best efforts to insure Holder's receipt of the paid amount.

B. If prior to making the full payment of the amount due under this Note, any case, proceeding, or other action is instituted;

i. under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have any order for relief of debtors, or seeking to adjudicate Maker as bankrupt or insolvent; or

ii. seeking appointment of a receiver, trustee, custodian or other similar official for Maker or for all or any substantial part of Maker's assets.

5. The Maker shall provide the United States written notice of an Event of Default within two (2) business days of such event by overnight mail, delivered to the Office of the United States Attorney for the Southern District of Indiana (USAO), at 10 Market St., Suite 2100, Indianapolis, IN 46204.

6. Upon the occurrence of an Event of Default, without further notice or presentment and demand by the United States:

A. The Outstanding Balance shall become due and payable after 30 days from an Event of Default not cured within 30 days (default amount). Interest shall accrue on the default amount from the date of the Event of Default at 12 per cent per annum, compounded daily.

B. [Reserved].

C. The United States retains any and all other rights and remedies it has or may have under law and equity, and may exercise those rights or remedies.

D. No failure or delay on the part of the United States to exercise any right or remedy shall operate as a waiver of the United States' rights. No partial or single exercise by the United States of any right or remedy shall operate as a waiver of the United States' rights.

E. Maker will pay the United States all reasonable costs of collection, including reasonable attorneys' fees and expenses.

7. Waiver by the Holder of any default by Maker, its successors, or assigns will not constitute a waiver of a subsequent default. Failure by the Holder to exercise any right, power, or privilege which it may have by reason of default will not preclude the exercise of such right, power, or privilege so long as such default remains uncured or if a subsequent default occurs.

8. This Note shall be governed and construed according to the laws of the United States of America.

9. Maker acknowledges that it is entering into this Note, freely, voluntarily and with no degree of compulsion whatsoever.

10. Dave O'Mara Contractor, Inc. shall provide the USAO a certified copy of a resolution of Dave O'Mara Contractor, Inc.'s Board of Directors affirming that Dave O'Mara Contractor, Inc. has authority to enter into this Note, and that Dave O'Mara Contractor, Inc. has: (1) reviewed this Note and the Settlement Agreement; (2) consulted with legal counsel in connection with this matter; (3) voted to authorize Amy L. Boswell to enter into this Note on behalf of Maker; and (4) voted to authorize the corporate officer identified below to execute this Note and to take such further steps as necessary to carry out the terms of this Note.

IN WITNESS THEREOF, Maker intending to be legally bound hereby and so bind its successors and assigns, has caused this Note to be executed by its proper corporate officer and its corporate seal hereunto affixed, duly attested this ____, day of September, 2020.

DAVE O'MARA CONTRACTOR, INC.

By: _____

David J. O'Mara
President

Acknowledged by: _____

[SEAL]

STATE OF _____)

SS:

COUNTY OF _____)

On September ____, 2020, before me personally came David J. O'Mara, to me known who, being duly sworn, did depose and state that (1) he resides in Indiana (2) is an officer of Dave O'Mara Contractor, Inc., the corporation described in and which executed the above instrument, (3) he knows the seal of Dave O'Mara Contractor, Inc., (4) the seal affixed to said instrument is such corporate seal, (4) that it was so affixed by order of the Board of Directors of Dave O'Mara Contractor, Inc., (5) and that he signed his name thereto by like order.

Notary Public
State of Indiana
My Commission Expires: _____

EXHIBIT B

PROMISSORY NOTE

1. For value received, and pursuant to a Settlement Agreement dated September ____, 2020 (Effective Date), attached hereto (Settlement Agreement), each of David J. O'Mara, Nancy A. O'Mara, Amy L. Boswell, Robert L. O'Mara and Daniel J. O'Mara, jointly and severally, (Makers), for themselves and their respective successors and assigns, promise to pay to the United States of America (Holder), or its assignee, the full principal sum of one million nine hundred eighty-six thousand two hundred sixty-three dollars and seventy-five cents (\$1,986,263.75) (Outstanding Balance), without interest, as set forth below.

The Makers shall collectively pay to the Holder the Outstanding Balance in five equal payments of three hundred ninety-seven thousand two hundred fifty-two dollars and seventy-five cents (\$397,252.75). The first such payment shall be due no later than ten days after the Effective Date, and each of the remaining four payments shall be due precisely 12, 24, 36 and 48 months, respectively after the due date of the initial payment.

2. Payments will be made by wire transfer as indicated in the Settlement Agreement. If there is any change in the method or instructions of payment, the Holder shall inform the Makers at least fourteen (14) days before payment is due.

3. This Note may be prepaid, in whole or in part, without penalty or premium.

4. Pursuant to the Settlement Agreement, the Makers procured from German American Bank and shall deliver or cause to be delivered to the United States of America, Letter of Credit No. 1220502480, established in favor of the United States by German American Bank (Letter of Credit). The Makers agree, and the holder of this Note, by its acceptance hereof, likewise agrees, that, except with respect to indebtedness covered by Letter of Credit No. 1220502480 issued by German American Bank on September ____, 2020, the indebtedness represented by this Note, is subordinate to the Makers' indebtedness under the Loan and Security Arrangement between German American Bank and the Makers, dated September ____, 2020. The Holder may draw on the Letter of Credit only upon an Event of Default as defined by this Note. Makers may, with the prior written approval of the Holder, cause to be issued a substitute Letter of Credit of like terms and conditions. If the Letter of Credit expires before the entire outstanding balance due under this Note is paid, the Makers shall cause to be issued a substitute Letter of Credit of like terms and conditions.

5. Makers are in default of this Note on the date of occurrence of any of the following events (Events of Default).

A. Makers' failure to procure, deliver, or maintain the Letter of Credit within fourteen (14) days of the Holder's notice to the Makers of such failure.

B. Makers' failure to pay any amount provided for in this Note within fourteen (14) days of the Holder's notice to the Makers of a failure to make such payment when due and

payable; provided, however, that an Event of Default does not occur if because of events outside of Makers' control, the Holder does not receive the paid amount after transmission by Makers. Makers will make their best efforts to insure Holder's receipt of the paid amount.

C. If prior to making the full payment of the amount due under this Note, any case, proceeding, or other action is instituted;

i. under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have any order for relief of debtors, or seeking to adjudicate any of the Makers as bankrupt or insolvent; or

ii. seeking appointment of a receiver, trustee, custodian or other similar official for any of the Makers or for all or any substantial part of any of the Makers' assets.

6. The Makers shall provide the United States written notice of an Event of Default within two (2) business days of such event by overnight mail, delivered to the Office of the United States Attorney for the Southern District of Indiana (USAO), at 10 Market St., Suite 2100, Indianapolis, IN 46204.

7. Upon the occurrence of an Event of Default, without further notice or presentment and demand by the United States:

A. The portion of the Outstanding Balance secured by the Letter of Credit shall become immediately due and payable, and the portion of the Outstanding Balance not secured by the Letter of Credit shall become due and payable after 30 days from an Event of Default not cured within 30 days (default amount). Interest shall accrue on the default amount from the date of the Event of Default at 12 per cent per annum, compounded daily.

B. The United States may draw the amount due under this Promissory Note insofar as it is still available for drawing under the Letter of Credit and may retain all proceeds of thereof, and the default amount shall be reduced by the amount of such draw.

C. The United States retains any and all other rights and remedies it has or may have under law and equity, and may exercise those rights or remedies.

D. No failure or delay on the part of the United States to exercise any right or remedy shall operate as a waiver of the United States' rights. No partial or single exercise by the United States of any right or remedy shall operate as a waiver of the United States' rights.

E. Makers will pay the United States all reasonable costs of collection, including reasonable attorneys' fees and expenses.

8. Waiver by the Holder of any default by Makers, their respective successors, or assigns will not constitute a waiver of a subsequent default. Failure by the Holder to exercise any right, power, or privilege which it may have by reason of default will not preclude the exercise of such

right, power, or privilege so long as such default remains uncured or if a subsequent default occurs.

9. This Note shall be governed and construed according to the laws of the United States of America.

10. Makers acknowledge that it is entering into this Note, freely, voluntarily and with no degree of compulsion whatsoever.

11. Each of the Makers shall provide the USAO a certificate affirming that such Maker has authority to enter into this Note, and that such Maker has: (1) reviewed this Note, the Letter of Credit, and the Settlement Agreement; and (2) consulted with legal counsel in connection with this matter.

IN WITNESS THEREOF, each of the Makers intending to jointly and severally be legally bound hereby and so bind their respective successors and assigns, have executed this Note this ____, day of September, 2020.

David J. O'Mara

STATE OF _____)

SS:

COUNTY OF _____)

On September ____, 2020, before me personally came David J. O'Mara, to me known who, being duly sworn, did acknowledge the foregoing instrument and depose and state that he resides in Indiana.

Notary Public
State of Indiana
My Commission Expires:

Nancy A. O'Mara

STATE OF _____)

SS:

COUNTY OF _____)

On September ____, 2020, before me personally came Nancy A. O'Mara, to me known who, being duly sworn, did acknowledge the foregoing instrument and depose and state that she resides in Indiana.

Notary Public
State of Indiana
My Commission Expires:

Amy L. Boswell

STATE OF _____)

SS:

COUNTY OF _____)

On September ____, 2020, before me personally came Amy L. Boswell, to me known who, being duly sworn, did acknowledge the foregoing instrument and depose and state that she resides in Indiana.

Notary Public
State of Indiana
My Commission Expires:

Robert L. O'Mara

STATE OF _____)

SS:

COUNTY OF _____)

On September ____, 2020, before me personally came Robert L. O'Mara, to me known who, being duly sworn, did acknowledge the foregoing instrument and depose and state that he resides in Indiana.

Notary Public
State of Indiana
My Commission Expires:

Daniel J. O'Mara

STATE OF _____)

SS:

COUNTY OF _____)

On September ____, 2020, before me personally came Daniel J. O'Mara, to me known who, being duly sworn, did acknowledge the foregoing instrument and depose and state that he resides in Indiana.

Notary Public
State of Indiana
My Commission Expires:

EXHIBIT C

CONTINGENT GUARANTY

This Contingent Guaranty (this "Agreement") is entered into as of September ___ 2020 by and among Dave O'Mara Contractor, Inc. ("Contingent Guarantor"), David J. O'Mara, Nancy A. O'Mara, Amy L. Boswell, Robert L. O'Mara and Daniel J. O'Mara (collectively, the "Shareholders"):

RECITALS

A. The parties entered into that certain Settlement Agreement dated as of September ___, 2020 (the "Underlying Agreement"), whereby the Shareholders promise to make certain payments to the United States of America in settlement of claims against Contingent Guarantor.

B. Pursuant to Section 1 of the Underlying Agreement and contemporaneously with the execution of this Agreement, Contingent Guarantor has agreed, subject to the terms and conditions set forth in this Agreement, to guarantee for the benefit of the United States the performance of the Shareholders, for any failure by any of the Shareholders to pay any monetary obligations set forth in the Underlying Agreement or the promissory note delivered by the Shareholders pursuant thereto (the "Guaranteed Obligations").

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

AGREEMENTS

1. Recitals. The above recitals are hereby incorporated by reference.
2. Statement of Contingent Guaranty; Duration. Subject to the conditions set forth in Section 3 below, Contingent Guarantor hereby guarantees the performance of the Shareholders regarding the Guaranteed Obligations, whether according to the present terms thereof or pursuant to any change or changes or amendment in the terms, covenants and conditions thereof now or at any time hereafter granted. In the event that both of the conditions set forth in Section 3 below shall occur and Contingent Guarantor becomes liable under this Agreement, Contingent Guarantor's obligations hereunder shall be continuing and shall remain in full force and effect until completion of the Guaranteed Obligations, whereupon the liability of Contingent Guarantor hereunder shall be deemed to be satisfied and discharged.
3. Conditions to Guaranty. Contingent Guarantor shall be liable under this Agreement only if both of the following conditions shall occur:
 - a. A Default occurs under the Underlying Agreement; and
 - b. The Irrevocable Letter of Credit (Letter of Credit) pertaining to the Shareholders, as set forth in Section 1(d) of the Underlying Agreement, has been presented for payment by the United States and after receipt and

application of available monetary funds from the Letter of Credit, there remains a balance payable pursuant to the Underlying Agreement.

4. Procedures for Enforcing Contingent Guaranty. Within fourteen (14) days after the United States becomes aware that both of the conditions to Contingent Guarantor's liability hereunder have occurred as set forth in Section 3, the United States shall provide written notice to Contingent Guarantor of the United States' intent to enforce this Agreement. Upon receipt of said written notice from the United States, Contingent Guarantor shall have fourteen (14) days to commence or cause to be commenced payment of the outstanding Guaranteed Obligations of any of the Shareholders under the Underlying Agreement, failing which, the United States may thereafter exercise any other remedy available to it at law or in equity against Contingent Guarantor.

5. Notices. All notices hereunder or required by law shall be in writing, and shall be deemed properly delivered when deposited in the United States mail, postage prepaid, or sent via overnight courier addressed to the parties hereto at their respective addresses set forth below or as they may hereafter specify by written notice delivered in accordance herewith:

If to Contingent Guarantor:

DAVE O'MARA CONTRACTOR, INC.

Attn: Daniel J. O'Mara
P.O. Box 1139
1100 East O & M Avenue
North Vernon, IN 47265

and

Attn: Jessica A. Hill
P.O. Box 1139
7 North 5th Street
North Vernon, IN 47265

If to the United States of America:

U.S. DEPARTMENT OF JUSTICE

Attn: Daniel A. Spiro
3 CON Bldg., Rm. 10.1310
175 N St., N.E.
Washington, DC 20002

and

U.S. ATTORNEY'S OFFICE

Southern District of Indiana
Attn: Rachana N. Fischer
10 West Market Street, Ste. 2100
Indianapolis, IN 46204

If to the Shareholders:

DAVID J. O'MARA

124 Oak Street
North Vernon, IN 47265

NANCY A. O'MARA

124 Oak Street
North Vernon, IN 47265

AMY L. BOSWELL

Dave O'Mara Contractor, Inc.
Attn: Daniel J. O'Mara
P.O. Box 1139
1100 East O & M Avenue
North Vernon, IN 47265

and

Dave O'Mara Contractor, Inc.
Attn: Jessica A. Hill
P.O. Box 1139
7 North 5th Street
North Vernon, IN 47265

ROBERT L. O'MARA

Dave O'Mara Contractor, Inc.
Attn: Daniel J. O'Mara
P.O. Box 1139
1100 East O & M Avenue
North Vernon, IN 47265

and

Dave O'Mara Contractor, Inc.
Attn: Jessica A. Hill
P.O. Box 1139
7 North 5th Street
North Vernon, IN 47265

DANIEL J. O'MARA

Dave O'Mara Contractor, Inc.
Attn: Daniel J. O'Mara
P.O. Box 1139
1100 East O & M Avenue
North Vernon, IN 47265

and

Dave O'Mara Contractor, Inc.
Attn: Jessica A. Hill
P.O. Box 1139
7 North 5th Street
North Vernon, IN 47265

6. Governing Law. This Agreement shall be construed, and the rights and obligations of Contingent Guarantor and the United States of America hereunder shall be determined, in accordance with the laws of the State of Indiana.

7. Entire Agreement. This Agreement, together with the Underlying Agreement and any exhibits thereto, shall constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. None of the terms or provisions of this Agreement may be altered, modified or amended except by an instrument in writing, duly executed by both the Contingent Guarantor and the United States of America.

8. Counterparts. This Agreement may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Contingent Guarantor and each of the Shareholders have caused this Contingent Guaranty to be executed in its own name and on its own behalf by its duly authorized officer and self, respectively, as of the day and year first above written.

“Contingent Guarantor”

Dave O’Mara Contractor, Inc.

By: _____

David J. O’Mara
President

“Shareholders”

David J. O’Mara

Nancy A. O’Mara

Amy L. Boswell

Robert L. O’Mara

Daniel J. O’Mara

EXHIBIT D

PROMISSORY NOTE

1. For value received, and pursuant to a Settlement Agreement dated September ____, 2020 (Effective Date), attached hereto (Settlement Agreement), each of Padgett Trucking, Inc., an Indiana corporation, and Dave O'Mara Paving, Inc., an Indiana corporation, jointly and severally, (Makers), for themselves and their respective successors and assigns, promise to pay to the United States of America (Holder), or its assignee, the full principal sum of one million three hundred fifty-nine thousand eight hundred eighty-three dollars and thirty-five cents (\$1,359,883.35) (Outstanding Balance), without interest, as set forth below.

The Makers shall collectively pay to the Holder the Outstanding Balance in five equal payments of two hundred seventy-one thousand nine hundred seventy-six dollars and sixty-seven cents (\$271,976.67). The first such payment shall be due no later than ten days after the Effective Date, and each of the remaining four payments shall be due precisely 12, 24, 36 and 48 months, respectively after the due date of the initial payment.

2. Payments will be made by wire transfer as indicated in the Settlement Agreement. If there is any change in the method or instructions of payment, the Holder shall inform the Makers at least fourteen (14) days before payment is due.

3. This Note may be prepaid, in whole or in part, without penalty or premium.

4. Pursuant to the Settlement Agreement, the Makers procured from Centier Bank and shall deliver or cause to be delivered to the United States of America, Letter of Credit No. 01214, established in favor of the United States by Centier Bank (Letter of Credit). The Makers agree, and the holder of this Note, by its acceptance hereof, likewise agrees, that, except with respect to indebtedness covered by Letter of Credit No. 01214 issued by Centier Bank on August 14, 2020, the indebtedness represented by this Note, is subordinate to the Makers' indebtedness under the Loan and Security Arrangement between Centier Bank and the Makers, dated September ____, 2020. The Holder may draw on the Letter of Credit only upon an Event of Default as defined by this Note. Makers may, with the prior written approval of the Holder, cause to be issued a substitute Letter of Credit of like terms and conditions. If the Letter of Credit expires before the entire outstanding balance due under this Note is paid, the Makers shall cause to be issued a substitute Letter of Credit of like terms and conditions.

5. Makers are in default of this Note on the date of occurrence of any of the following events (Events of Default).

A. Makers' failure to procure, deliver, or maintain the Letter of Credit within fourteen (14) days of the Holder's notice to the Makers of such failure.

B. Makers' failure to pay any amount provided for in this Note within fourteen (14) days of the Holder's notice to the Makers of a failure to make such payment when due and payable; provided, however, that an Event of Default does not occur if because of events outside

of Makers' control, the Holder does not receive the paid amount after transmission by Makers. Makers will make their best efforts to insure Holder's receipt of the paid amount.

C. If prior to making the full payment of the amount due under this Note, any case, proceeding, or other action is instituted;

i. under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have any order for relief of debtors, or seeking to adjudicate either of the Makers as bankrupt or insolvent; or

ii. seeking appointment of a receiver, trustee, custodian or other similar official for either of the Makers or for all or any substantial part of either of the Makers' assets.

6. The Makers shall provide the United States written notice of an Event of Default within two (2) business days of such event by overnight mail, delivered to the Office of the United States Attorney for the Southern District of Indiana (USAO), at 10 Market St., Suite 2100, Indianapolis, IN 46204.

7. Upon the occurrence of an Event of Default, without further notice or presentment and demand by the United States:

A. The portion of the Outstanding Balance secured by the Letter of Credit shall become immediately due and payable, and the portion of the Outstanding Balance not secured by the Letter of Credit shall become due and payable after 30 days from an Event of Default not cured within 30 days (default amount). Interest shall accrue on the default amount from the date of the Event of Default at 12 per cent per annum, compounded daily.

B. The United States may draw the amount due under this Promissory Note insofar as it is still available for drawing under the Letter of Credit and may retain all proceeds of thereof, and the default amount shall be reduced by the amount of such draw.

C. The United States retains any and all other rights and remedies it has or may have under law and equity, and may exercise those rights or remedies.

D. No failure or delay on the part of the United States to exercise any right or remedy shall operate as a waiver of the United States' rights. No partial or single exercise by the United States of any right or remedy shall operate as a waiver of the United States' rights.

E. Makers will pay the United States all reasonable costs of collection, including reasonable attorneys' fees and expenses.

8. Waiver by the Holder of any default by Makers, their respective successors, or assigns will not constitute a waiver of a subsequent default. Failure by the Holder to exercise any right, power, or privilege which it may have by reason of default will not preclude the exercise of such right, power, or privilege so long as such default remains uncured or if a subsequent default occurs.

9. This Note shall be governed and construed according to the laws of the United States of America.

10. Makers acknowledge that it is entering into this Note, freely, voluntarily and with no degree of compulsion whatsoever.

11. Each of the Makers shall provide the USAO a certified copy of a resolution of such Maker's Board of Directors affirming that such Maker has authority to enter into this Note, and that such Maker has: (1) reviewed this Note, the Letter of Credit, and the Settlement Agreement; (2) consulted with legal counsel in connection with this matter; (3) voted to authorize Amy L. Boswell to enter into this Note on behalf of Maker; and (4) voted to authorize the corporate officer identified below to execute this Note and to take such further steps as necessary to carry out the terms of this Note.

IN WITNESS THEREOF, each of the Makers intending to jointly and severally be legally bound hereby and so bind their respective successors and assigns, have caused this Note to be executed by its proper corporate officer and its corporate seal hereunto affixed, duly attested this _____, day of September, 2020.

PADGETT TRUCKING, INC.

By: _____
David J. O'Mara
President

Acknowledged by: _____

[SEAL]

STATE OF _____)
COUNTY OF _____)

SS:

On September ____, 2020, before me personally came David J. O'Mara, to me known who, being duly sworn, did depose and state that (1) he resides in Indiana (2) is an officer of Padgett Trucking, Inc., the corporation described in and which executed the above instrument, (3) he knows the seal of Padgett Trucking, Inc., (4) the seal affixed to said instrument is such corporate seal, (4) that it was so affixed by order of the Board of Directors of Padgett Trucking, Inc., (5) and that he signed his name thereto by like order.

Notary Public

State of Indiana
My Commission Expires:
DAVE O'MARA PAVING, INC.

By: _____
Daniel J. O'Mara
Vice President

Acknowledged by: _____

[SEAL]

STATE OF _____)
COUNTY OF _____)

SS:

On September ____, 2020, before me personally came Daniel J. O'Mara, to me known who, being duly sworn, did depose and state that (1) he resides in Indiana (2) is an officer of Dave O'Mara Paving, Inc., the corporation described in and which executed the above instrument, (3) he knows the seal of Dave O'Mara Paving, Inc., (4) the seal affixed to said instrument is such corporate seal, (4) that it was so affixed by order of the Board of Directors of Dave O'Mara Paving, Inc., (5) and that he signed his name thereto by like order.

Notary Public
State of Indiana
My Commission Expires:

EXHIBIT E

CONTINGENT GUARANTY

This Contingent Guaranty (this "Agreement") is entered into as of September ____, 2020 by and among Dave O'Mara Contractor, Inc. ("Contingent Guarantor"), Padgett Trucking, Inc. ("Trucking"), and Dave O'Mara Paving, Inc. ("Paving");

RECITALS

A. The parties entered into that certain Settlement Agreement dated as of September ____, 2020 (the "Underlying Agreement"), whereby Paving and Trucking promise to make certain payments to the United States of America in settlement of claims against Contingent Guarantor.

B. Pursuant to Section 1 of the Underlying Agreement and contemporaneously with the execution of this Agreement, Contingent Guarantor has agreed, subject to the terms and conditions set forth in this Agreement, to guarantee for the benefit of the United States the performance of Trucking and Paving, for any failure by Trucking or Paving to pay any monetary obligations set forth in the Underlying Agreement or the promissory note delivered by Trucking and Paving pursuant thereto (the "Guaranteed Obligations").

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

AGREEMENTS

1. Recitals. The above recitals are hereby incorporated by reference.
2. Statement of Contingent Guaranty; Duration. Subject to the conditions set forth in Section 3 below, Contingent Guarantor hereby guarantees the performance of Trucking and Paving regarding the Guaranteed Obligations, whether according to the present terms thereof or pursuant to any change or changes or amendment in the terms, covenants and conditions thereof now or at any time hereafter granted. In the event that both of the conditions set forth in Section 3 below shall occur and Contingent Guarantor becomes liable under this Agreement, Contingent Guarantor's obligations hereunder shall be continuing and shall remain in full force and effect until completion of the Guaranteed Obligations, whereupon the liability of Contingent Guarantor hereunder shall be deemed to be satisfied and discharged.
3. Conditions to Guaranty. Contingent Guarantor shall be liable under this Agreement only if both of the following conditions shall occur:
 - a. A Default occurs under the Underlying Agreement; and

- b. The Irrevocable Letter of Credit (Letter of Credit) pertaining to Trucking and Paving (also referred to as the “Affiliates”), as set forth in Section 1(d) of the Underlying Agreement, has been presented for payment by the United States and after receipt and application of available monetary funds from the Letter of Credit, there remains a balance payable pursuant to the Underlying Agreement.

4. Procedures for Enforcing Contingent Guaranty. Within fourteen (14) days after the United States becomes aware that both of the conditions to Contingent Guarantor’s liability hereunder have occurred as set forth in Section 3, the United States shall provide written notice to Contingent Guarantor of the United States’ intent to enforce this Agreement. Upon receipt of said written notice from the United States, Contingent Guarantor shall have fourteen (14) days to commence or cause to be commenced payment of the outstanding Guaranteed Obligations of Trucking or Paving under the Underlying Agreement, failing which, the United States may thereafter exercise any other remedy available to it at law or in equity against Contingent Guarantor.

5. Notices. All notices hereunder or required by law shall be in writing, and shall be deemed properly delivered when deposited in the United States mail, postage prepaid, or sent via overnight courier addressed to the parties hereto at their respective addresses set forth below or as they may hereafter specify by written notice delivered in accordance herewith:

If to Contingent Guarantor:

DAVE O’MARA CONTRACTOR, INC.

Attn: Daniel J. O’Mara
P.O. Box 1139
1100 East O & M Avenue
North Vernon, IN 47265

and

Attn: Jessica A. Hill
P.O. Box 1139
7 North 5th Street
North Vernon, IN 47265

If to the United States of America:

U.S. DEPARTMENT OF JUSTICE

Attn: Daniel A. Spiro
3 CON Bldg., Rm. 10.1310
175 N St., N.E.
Washington, DC 20002

and

U.S. ATTORNEY'S OFFICE
Southern District of Indiana
Attn: Rachana N. Fischer
10 West Market Street, Ste. 2100
Indianapolis, IN 46204

If to Trucking:

PADGETT TRUCKING, INC.
c/o Daniel J. O'Mara
Dave O'Mara Contractor, Inc.
P.O. Box 1139
1100 East O & M Avenue
North Vernon, IN 47265

and

c/o Jessica A. Hill
Dave O'Mara Contractor, Inc.
P.O. Box 1139
7 North 5th Street
North Vernon, IN 47265

If to Paving:

DAVE O'MARA PAVING, INC.
c/o Daniel J. O'Mara
Dave O'Mara Contractor, Inc.
P.O. Box 1139
1100 East O & M Avenue
North Vernon, IN 47265

and

c/o Jessica A. Hill
Dave O'Mara Contractor, Inc.
P.O. Box 1139
7 North 5th Street
North Vernon, IN 47265

6. Governing Law. This Agreement shall be construed, and the rights and obligations of Contingent Guarantor and the United States of America hereunder shall be determined, in accordance with the laws of the State of Indiana.

7. Entire Agreement. This Agreement, together with the Underlying Agreement and any exhibits thereto, shall constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. None of the terms or provisions of this Agreement may be altered, modified or amended except by an instrument in writing, duly executed by both the Contingent Guarantor and the United States of America.

8. Counterparts. This Agreement may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the Contingent Guarantor, Trucking and Paving have caused this Contingent Guaranty to be executed in its own name and on its own behalf by its duly authorized officer, respectively, as of the day and year first above written.

“Contingent Guarantor”

Dave O’Mara Contractor, Inc.

By:_____

David J. O’Mara
President

“Trucking”

Padgett Trucking, Inc.

By:_____

David J. O’Mara
President

“Paving”

Dave O’Mara Paving, Inc.

By:_____

Daniel J. O’Mara
Vice President

EXHIBIT F

Irrevocable Nontransferable Standby Letter of Credit

Letter of Credit No. 1220502480

Issue Date: September ____, 2020

Maximum Amount: \$750,000

To Beneficiary:

Department of Justice

Office of the U.S. Attorney

for the Southern District of Indiana

Indianapolis, IN

Ladies and Gentlemen:

We hereby establish in favor of the United States of America (the Beneficiary), our Irrevocable Nontransferable Standby Letter of Credit (Letter of Credit) in the maximum aggregate amount of seven hundred fifty thousand Dollars effective, September ____, 2020. The Beneficiary may make demand for payment under this Letter of Credit upon the failure of David J. O'Mara, Nancy A. O'Mara, Amy L. Boswell, Robert L. O'Mara and Daniel J. O'Mara, jointly and severally, to make any of the payments that are required of any of them in accordance with the terms of the Promissory Note issued to the Beneficiary by David J. O'Mara, Nancy A. O'Mara, Amy L. Boswell, Robert L. O'Mara and Daniel J. O'Mara, jointly and severally, dated September ____, 2020, a copy of which is Attachment 3 (Note), upon presentation of sight draft in the form of Attachment 1 together with draw certificate in the form of Attachment 2 signed by an authorized representative of the Beneficiary to us at the address shown below:

German American Bank

North Vernon Office

220 N State Street

North Vernon, IN 47265

or at such other office located in the United States as may be designated by us. Execution of the Verification of Authority provided on the form of Attachment 2 is adequate indicia that the representative of the Beneficiary is authorized to execute these documents. A sight draft and draw certificate hereunder may be submitted via hand delivery or overnight courier to the address above. From and after September ____, 2020 when the outstanding balance due under the Note is less than \$750,000, the amount of this Letter of Credit shall equal the then outstanding quarterly balance due under the Note as confirmed by the Beneficiary as identified in attachment 2. All drafts drawn under this Letter of Credit must contain the clause, "Drawn under German American Bank, Letter of Credit No. 1220502480, dated September ____, 2020."

Before the expiration date of this Letter of Credit, David J. O'Mara, Nancy A. O'Mara, Amy L. Boswell, Robert L. O'Mara and Daniel J. O'Mara shall ensure that a replacement standby letter of credit is issued to Beneficiary, on the same terms as this present Letter of Credit (including all amendments thereto), in the amount to which this present Letter of Credit has yet to be drawn upon by the Beneficiary.

Partial drawings are permitted hereunder; provided that the aggregate amount of drawings hereunder is not in excess of the Maximum Amount set forth above. Multiple drawings are permitted.

This Letter of Credit or, if applicable, any replacement standby letter of credit referenced above, shall expire only after all payments are made pursuant to the Note as confirmed by the Beneficiary as identified in attachment 2 in writing. The undersigned issuing bank hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation of documents as herein specified if presentation is made at our counters.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 599 (the ISP) and as to matters not covered by the ISP, shall be governed by the laws of the State of Indiana. The Letter of Credit shall expire when the outstanding balance due under the Note is paid.

German American Bank

By: _____
Ashley McCreary
Vice President

Attachment 1

Sight Draft

Date: _____

German American Bank
North Vernon Office
220 N State Street
North Vernon, IN 47265

At sight, pay to the order of the DEPARTMENT OF JUSTICE by wire transfer to

Bank Name: _____

Routing No: _____

Account No. _____

Attention: _____

the amount of _____ Dollars (\$ _____) drawn on German American Bank, as issuer of its Irrevocable Nontransferable Letter of Credit No. 1220502480.

_____, dated _____.

UNITED STATES OF AMERICA

by:

Name:

Title:

Attachment 2

Draw Certificate

Dated: _____
German American Bank
North Vernon Office
220 N State Street
North Vernon, IN 47265

Re: German American Bank, Irrevocable Nontransferable Letter of Credit No. 1220502480, dated September ____, 2020, in favor of the United States of America as Beneficiary for the account of David J. O'Mara, Nancy A. O'Mara, Amy L. Boswell, Robert L. O'Mara and Daniel J. O'Mara, jointly and severally.

Ladies and Gentlemen:

The undersigned duly authorized official of the Beneficiary hereby certifies that there has been a failure to make a payment required in accordance with either of the Promissory Notes issued to the United States by David J. O'Mara, Nancy A. O'Mara, Amy L. Boswell, Robert L. O'Mara and Daniel J. O'Mara, jointly and severally, dated September ____, 2020, and that the Beneficiary is entitled to draw under the Letter of Credit No. 1220502480.

Demand for payment under the above-referenced Letter of Credit is hereby made for the following amount, which when added together with all prior drawings under the Letter of Credit is not in excess of the Maximum Amount available to be drawn thereunder: \$750,000. Payment should be made in accordance with the instructions provided in the draft which accompanies this certificate.

Very truly yours,
UNITED STATES OF AMERICA
Beneficiary
by:

Name:
Title:

Verification of Authority

I certify under penalty of perjury under the laws of the United States of America that I have authority to execute this Draw Certificate and accompanying Draft on behalf of the United States of America.

Dated: _____

EXHIBIT G

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Letter of Credit No. 01214
Issue Date: September ___, 2020
Maximum Amount: \$600,000
Expiration Date: September ___, 2021

To Beneficiary: Department of Justice Office of the U.S. Attorney
for the Southern District of Indiana Indianapolis, IN

Ladies and Gentlemen:

We hereby establish in favor of the United States of America (the Beneficiary), our Irrevocable Nontransferable Standby Letter of Credit (Letter of Credit) in the maximum aggregate amount of Six Hundred Thousand Dollars effective September ___, 2020. The Beneficiary may make demand for payment under this Letter of Credit upon the failure of Padgett Trucking, Inc., an Indiana Corporation, and Dave O'Mara Paving, Inc., an Indiana Corporation, jointly and severally, to make a payment in accordance with the terms of the Promissory Note issued to the Beneficiary by Padgett Trucking, Inc., an Indiana Corporation and Dave O'Mara Paving, Inc., an Indiana Corporation, jointly and severally, dated September ___, 2020, a copy of which is Attachment 3 (Note), upon presentation of sight draft in the form of Attachment 1 together with draw certificate in the form of Attachment 2 signed by an authorized representative of the Beneficiary to us at the address shown below:

Centier Bank
600 East 84th Avenue
Merrillville, IN 46410

or at such other office located in the United States as may be designated by us. Execution of the Verification of Authority provided on the form of Attachment 2 is adequate indicia that the representative of the Beneficiary is authorized to execute these documents. A sight draft and draw certificate hereunder may be submitted via hand delivery or overnight courier to the address above. From and after September ___, 2020, when the outstanding balance due under the Note is less than \$600,000.00, the amount of this Letter of Credit shall equal the then outstanding quarterly balance due under the Note as confirmed by the Beneficiary as identified in attachment 2. All drafts drawn under this Letter of Credit must contain the clause, "Drawn under Centier Bank Letter of Credit No.01214, dated September ___, 2020."

Before the expiration date of this Letter of Credit, Padgett Trucking, Inc. and Dave O'Mara Paving, Inc. shall ensure that a replacement standby letter of credit is issued to Beneficiary, on

the same terms as this present Letter of Credit (including all amendments thereto), in the amounts to which this present Letter of Credit has yet to be drawn upon by the Beneficiary.

Partial drawings are permitted hereunder; provided that the aggregate amount of drawings hereunder is not in excess of the Maximum Amount set forth above. Multiple drawings are permitted.

This Letter of Credit or, if applicable, any replacement standby letter of credit referenced above, shall expire only after all payments are made pursuant to the Note as confirmed by the Beneficiary as identified in attachment 2 in writing. The undersigned issuing bank hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation of documents as herein specified if presentation is made at our counters.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the ISP) and as to matters not covered by the ISP, shall be governed by the laws of the State of Indiana. The Letter of Credit shall expire when the outstanding balance due under the Note is paid.

Centier Bank

By: _____
Timothy J. Turner
Vice President

Attachment 1

Sight Draft

Date: _____

Centier Bank
600 East 84th Avenue
Merrillville, IN 46410

At sight, pay to the order of the DEPARTMENT OF JUSTICE by wire transfer to Bank Name: __

Routing No: _____

Account No. _____

Attention: _____

the amount of _____ Dollars (\$ _____) drawn on Centier
Bank, as issuer of its Irrevocable Nontransferable Letter of Credit No.01214.

_____, dated _____.

UNITED STATES OF AMERICA

By: _____

Name:

Title:

Attachment 2

Draw Certificate

Dated: _____

Centier Bank
600 East 84th Avenue
Merrillville, IN 46410

Re: Centier Bank, Irrevocable Nontransferable Letter of Credit No.01214 dated August 14, 2020, in favor of the United States of America as Beneficiary for the account of Padgett Trucking, Inc. and Dave O'Mara Paving, Inc., jointly and severally.

Ladies and Gentlemen:

The undersigned duly authorized official of the Beneficiary hereby certifies that there has been a failure to make a payment required in accordance with either of the Promissory Notes issued to the United States by Padgett Trucking, Inc., an Indiana corporation, and Dave O'Mara Paving, Inc., an Indiana Corporation, jointly and severally, dated August 14, 2020, and that the Beneficiary is entitled to draw under the Letter of Credit No.01214.

Demand for payment under the above-referenced Letter of Credit is hereby made for the following amount, which when added together with all prior drawings under the Letter of Credit is not in excess of the Maximum Amount available to be drawn thereunder: \$600,000. Payment should be made in accordance with the instructions provided in the draft which accompanies this certificate.

Very truly yours,
UNITED STATES OF AMERICA
Beneficiary

By: _____ Name:
Title:

Verification of Authority

I certify under penalty of perjury under the laws of the United States of America that I have authority to execute this Draw Certificate and accompanying Draft on behalf of the United States of America.

Dated: _____