



1459 Washington St  
Muscatine IA 52761-5040  
15631 263-8933  
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Public Works

City Transit  
263-8152

MEMORANDUM

TO: Brian Stineman, Public Works Director  
Greg Jenkins, Interim City Administrator

FROM: Jim Edgmond, City Engineer

SUBJECT: Resolution to Approve Contract and Bond, 2<sup>nd</sup> Street Reconstruction Project

DATE: Feb. 13, 2020

Equipment Maintenance  
Roadway Maintenance  
Collection & Drainage  
Building & Grounds  
Engineering

INTRODUCTION:

The 2<sup>nd</sup> Street Reconstruction Project for 2019 has progressed to the point shown on the schedule below:

SET PUBLIC HEARING FOR Nov. 21, 2019	11-07-2019	COMPLETED
PUBLIC HEARING	11-21-2019	COMPLETED
APPROVE PLANS AND SPECS	12-05-2019	COMPLETED
SEND OUT NOTICE TO BIDDERS	12-06-2019	COMPLETED
PRE-BID MEETING (2:00 PM)	01-07-2020	COMPLETED
RECEIVE AND OPEN BIDS (2:00 PM)	01-15-2019	COMPLETED
RECOMMEND AWARD	02-06-2020	COMPLETED
RESOLUTION APPROVING CONTRACT AND PERF. BOND	02-20-2020	

BACKGROUND:

Over a year ago, the City of Muscatine entered into a design contract with Bolton-Menk to do plans for a revitalization of the transportation infrastructure including sidewalks on 2<sup>nd</sup> Street from Pine Street to Past Walnut Street. These plans are complete and KE Flatwork is the low bidder at \$2,932,298.39. The award of the work to KE was approved at the 2-06-2020 Council meeting. Staff recommends approval of the contract and performance and maintenance bond for this project.

RECOMMENDATION AND RATIONALE:

City staff requests the adoption of the resolution to approve the contract and bond for the project with KE Flatwork out of Eldridge Iowa.

BACKUP INFORMATION:

Contract  
Performance and Maintenance Bond

"I remember Muscatine for its sunsets. I have never seen any  
on either side of the ocean that equaled them" — Mark Twain

**RESOLUTION \_\_\_\_\_**

**APPROVING CONTRACT AND BOND  
FOR 2<sup>nd</sup> STREET RECONSTRUCTION PROJECT**

WHEREAS, this Council has awarded the contract for the 2<sup>nd</sup> Street Reconstruction Project to KE Flatwork dated the 20<sup>th</sup> day of February, 2020 in the amount of \$2,932,298.39; and

WHEREAS, this Council has authorized and directed the Mayor and City Clerk to enter into a written contract for this project with said contractor, subject to final approval by this Council; and

WHEREAS, the contract and bond has been examined by this Council;

NOW, THEREFORE, IT IS RESOLVED that:

1. The above contract between the City of Muscatine, Iowa and KE Flatwork dated the 20<sup>th</sup> day of February, 2020 in the amount of \$2,932,298.39 is approved.
2. The performance bond accompanying such contract, wherein KE Flatwork as principal and Westfield Insurance Company appears as surety, is approved.

The original executed contract and performance bond shall be placed on file in the office of the City Clerk.

PASSED, APPROVED AND ADOPTED THIS 20<sup>th</sup> DAY OF FEBRUARY, 2020.

\_\_\_\_\_  
Diana Broderson, Mayor

ATTEST:

\_\_\_\_\_  
Greg Jenkins, Interim City Administrator

## **2<sup>nd</sup> STREET RECONSTRUCTION CONTRACT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Muscatine, Iowa, party of the first part, hereinafter referred to as the "City" and KE Flatwork, party of the second part, hereinafter referred to as the "Contractor".

### **WITNESSETH**

That the Contractor and the City for the consideration stated herein mutually agree as follows:

ARTICLE 1: Statement of work. The Contractor shall furnish all supervision, technical, personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services and perform all work required for the construction of the 2<sup>nd</sup> Street Reconstruction Project, Muscatine, Iowa, all in strict accordance with the Contract Documents prepared by the City of Muscatine, Department of Public Works.

ARTICLE 2. The City will pay the Contractor for the performance of the contract, from funds legally available for that purpose. Payment will be made on the basis of an estimate equal to ninety-five (95) percent of the contract price, including materials, subject to approval of the City. The balance of the five (5) percent due to the Contractor will be made no earlier than thirty (30) days from the final acceptance of said work by the City.

The Contractor shall provide surety bond in the amount of 100% of the contract and shall guarantee the maintenance of the improvement for a period of two (2) years after its completion and acceptance by the City.

Completion Dates: All work must be completed by October 1<sup>st</sup>, 2021 with interim completion date of October 2<sup>nd</sup>, 2020.

The contract amount is \$2,932,298.39.

ARTICLE 3. Contract: The executed contract documents shall consist of the following:

- |                             |                            |
|-----------------------------|----------------------------|
| a. This Agreement           | f. Signed Copy of Proposal |
| b. Addenda Numbers <u>1</u> | g. Special Conditions      |
| c. Plans                    | h. Detailed Specifications |
| d. Notice to Bidders        | i. Standard Specifications |
| e. Instruction to Bidders   | j. General Conditions      |

THIS AGREEMENT, together with other documents enumerated in this ARTICLE 3, with said other documents are as fully a part of the contract as if hereto attached or herein repeated, forms the contract between the parties hereto. In the event that any provision in any component part of this contract

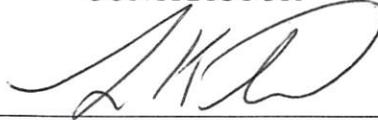
conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern, except as otherwise specifically stated.

IN WITNESS WHEREOF, the parties thereto have caused this AGREEMENT to be executed in triplicate original copies on the date and year first above written.

CITY OF MUSCATINE, IOWA

KE Flatwork Inc.

CONTRACTOR



\_\_\_\_\_  
By: Diana Broderson, Mayor

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

President

TITLE

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_



By: Greg Jenkins, Interim City Administrator/Clerk

Office Admin.

TITLE

**PERFORMANCE AND PAYMENT BOND**

KE Flatwork, Inc.

KNOW ALL MEN BY THESE PRESENTS THAT, a Principal, hereinafter called the Contractor and

Westfield Insurance Company

(Here insert the legal title of Surety)

as Surety, hereinafter called the Surety, are held and firmly bound unto City of Muscatine, Muscatine County, Iowa as obligee, hereinafter called the Owner, in the amount of Two Million Nine Hundred Thirty-two Thousand Two Hundred Ninety-Eight and 39/100 DOLLARS (\$2,932,298.39) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_, 2020, entered into a Contract with Owner for the

**2<sup>ND</sup> STREET RECONSTRUCTION PROJECT**

in accordance with drawings and specifications prepared by the Department of Public Works, City of Muscatine, Iowa, which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then the obligation of this bond shall be null and void; otherwise it shall remain in full force and effect.

A. The Surety hereby waives notice of any alteration by Owner to be, in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for submission to Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Owner and Surety of the lowest responsible Bidder, arrange for a contract between such Bidder and Owner, and make available as work progresses (even though there should be a default or a succession or defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price", as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

- B. The Contractor and his surety shall be obligated to remedy any defects in workmanship or materials that may develop in the improvements covered by this bond for a period of two (2) years from the date of acceptance of the improvements by the owner.
- C. Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.
- D. No right of action shall accrue to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

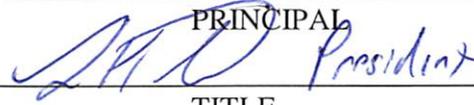
IT IS A FURTHER CONDITION OF THIS OBLIGATION that the principal and surety shall, in accordance with the provisions of Chapter 573 of the Code of Iowa, pay to all persons, firms or corporations having contracts directly with the principal or with subcontractors all just claims due them for labor performed or materials furnished in the performance of the contract on account of which this bond is given.

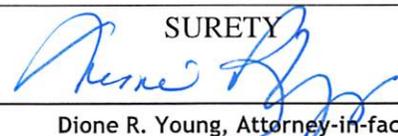
The provisions of Chapter 573, Code of Iowa, are a part of this bond to the same extent as if they were expressly set out herein.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
A.D. 2020.

IN THE PRESENCE OF:

  
\_\_\_\_\_  
WITNESS

KE Flatwork, Inc.  
\_\_\_\_\_  
PRINCIPAL  
  
\_\_\_\_\_  
TITLE

Westfield Insurance Company  
\_\_\_\_\_  
SURETY  
  
\_\_\_\_\_  
Dione R. Young, Attorney-in-fact



THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 03/29/19, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 1429262 00

General Power of Attorney

Westfield Insurance Co. Westfield National Insurance Co. Ohio Farmers Insurance Co. Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint CRAIG E. HANSEN, JAY D. FREIERMUTH, BRIAN M. DEMERLY, CINDY BENNETT, ANNE CROWNER, TIM MCCULLOH, STACY VENN, SHIRLEY S. BARTENHAGEN, LACEY CRAMBLIT, LAURE GUISSINGER, DIONE R. YOUNG, SYDNEY BURNETT, SETH ROOKER, WENDY A. CASEY, JOINTLY OR SEVERALLY

of WAUKEE and State of IA its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship-

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 29th day of MARCH A.D., 2019 .

Corporate Seals Affixed



WESTFIELD INSURANCE COMPANY WESTFIELD NATIONAL INSURANCE COMPANY OHIO FARMERS INSURANCE COMPANY

By: Dennis P. Baus, National Surety Leader and Senior Executive

State of Ohio County of Medina ss.:

On this 29th day of MARCH A.D., 2019 , before me personally came Dennis P. Baus to me known, who, being by me duly sworn, did depose and say, that he resides in Wooster, Ohio; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial Seal Affixed



Signature of David A. Kotnik

David A. Kotnik, Attorney at Law, Notary Public My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio County of Medina ss.:

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this day of A.D.



Signature of Frank A. Carrino, Secretary