



1459 Washington St
Muscatine IA 52761-5040
(563) 263-8933
Fax (563) 263-2127

Public Works

City Transit
263-8152

MEMORANDUM

To: Brian Stineman, Public Works Director
CC: Gregg Mandsager, City Admin., Pat Lynch, Asst. City Eng.
FROM: Jim Edgmond, City Engineer
DATE: August 28, 2019
RE: Resolution Approving Contract and Performance and Payment Bond for East 2nd Street and Mulberry Roundabout

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

INTRODUCTION:

This project was awarded to Heuer Construction at the August 15, 2019 City Council meeting. The City received only one bid for the project from Heuer Construction for \$2,114,738.00. The engineer's estimate for the project was the range of \$1,950,000 to \$1,850,000. This bid has been reviewed by the City staff and by MPW and it is mutually agreed that even though the price is approximately 10% over the estimate the project should continue.

BACKGROUND:

This project is anticipated to follow the schedule below:

Set Public Hearing	June 20, 2019	completed
Have Public Hearing & Approve Plans and Specs	July 3, 2019	completed
Release plans for bidding	July 5, 2019	completed
Open Bids	July 25, 2019 Aug. 02, 19	completed
Recommend Award to City Council	Aug. 1, 2019 Aug. 15, 19	completed
Approve Contract and Bond	Aug. 15, 2019 Sept. 05, 19	
Start Construction (tentatively)	Sept 01, 2019 Sept. 09, 19	

RECOMMENDATION/RATIONALE:

Staff recommends that council approve the resolution to approve the contract and bond for Heuer Construction. MPW's portion of the contract is estimated at \$240,000. The project development team will do the construction management for the city. This will save the city an estimated \$150,000 in consultant costs.

BACKUP INFORMATION:

1. Cc of contract and 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
Mulberry Avenue & East 2nd Street Roundabout**

WHEREAS, this Council has awarded the contract for the Mulberry Avenue & East 2nd Street Roundabout project to Heuer Construction, Inc. dated the 5th day of September 2019, in the amount of \$2,114,738.00; 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 Heuer Construction, Inc. dated the 5th day of September, 2019, in the amount of \$2,114,738.00 is approved.
2. The performance bond accompanying such contract, wherein Heuer Construction, Inc. appears as principal and Employers Mutual Casualty 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 5th DAY OF SEPTEMBER, 2019.

Diana Broderson, Mayor

ATTEST:

Gregg Mandsager, City Administrator

CONTRACT
Mulberry Avenue & East 2nd Street Roundabout

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, by and between the City of Muscatine, Iowa, party of the first part, hereinafter referred to as the "City" and _____, 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 Mulberry Avenue & East 2nd Street Roundabout 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 shall be completed by Late Start 9/2/2019; 70 Working Days.

The contract amount is \$2,114,738.00.

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

- | | |
|----------------------------|--|
| a. This Agreement | g. Non-Collusion Affidavit of Subcontractors |
| b. Addenda Numbers _____ | h. Special Conditions |
| c. Plans | i. Detailed Specifications |
| d. Notice to Bidders | j. Standard Specifications |
| e. Instruction to Bidders | k. General Conditions |
| f. Signed Copy of Proposal | |

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

Heuer Construction, Inc.

CONTRACTOR

By: Diana Broderson, Mayor

By: Jamie Heuer

President

TITLE

ATTEST: _____
By: Gregg Mandsager, City Administrator

ATTEST: Cynthia Gute

Office manager

TITLE

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS THAT, a Principal, **Heuer Construction, Inc.** hereinafter called the Contractor and

Employers Mutual Casualty 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 One Hundred Fourteen Thousand Seven Hundred Thirty Eight Dollars and 00/100 (\$2,114,738.00)** 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 _____, 2019, entered into a Contract with Owner for the

MULBERRY AVENUE & EAST 2ND STREET ROUNDABOUT 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. 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. 2019.

IN THE PRESENCE OF:

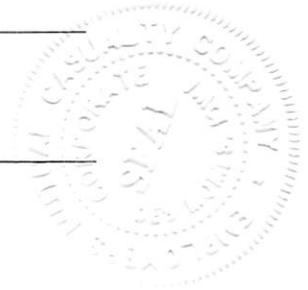
Crystal Gate
 WITNESS
Crystal Gate

Heuer Construction, Inc.
 PRINCIPAL

By: [Signature] Jamie Heuer
 TITLE President

Employers Mutual Casualty Company
 SURETY

By: [Signature]
Dione R. Young, Attorney-in-Fact



The first part of the document is a letter from the Secretary of the State to the Governor, dated 18th June 1954. It contains a report on the progress of the work done during the year 1953-54. The report is divided into two parts, the first dealing with the work done during the year and the second dealing with the work done during the first six months of the year 1954-55.

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Handwritten notes and signatures are present in this section. On the left, there is a signature that appears to be "J. H. ...". On the right, there is a signature that appears to be "J. H. ...".



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P.O. Box 712 • Des Moines, Iowa 50306-0712

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation
- 7. Hamilton Mutual Insurance Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

CRAIG E. HANSEN, BRIAN M. DEIMERLY, JAY D. FREIERMUTH, TIM MCCULLOH, CINDY BENNETT, ANNE CROWNER, STACY VENN, DIONE R. YOUNG, SHIRLEY S BARTENHAGEN

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Surety Bond:

ANY AND ALL BONDS

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire April 1, 2021, unless sooner revoked.

AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Authority is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-authority issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-authority authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-authority of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 28th day of March, 2018.

Seals



Bruce G. Kelley
Bruce G. Kelley, Chairman
of Companies 2, 3, 4, 5 & 6; President
of Company 1; Vice Chairman and
CEO of Company 7

Todd Strother
Todd Strother
Vice President

On this 28th day of March, 2018 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the Chairman, President, Vice Chairman and CEO, and/or Vice President, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2019.

Kathy Loveridge
Notary Public in and for the State of Iowa

CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 28th day of March, 2018, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this _____ day of _____, 2019.

J D Clough
Vice President

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

IN SENATE, January 12, 1912.

REPORT OF THE ATTORNEY GENERAL

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

ON JANUARY 10, 1911, CONCERNING THE

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

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