

**CITY OF DUBUQUE, IOWA
IMPROVEMENT CONTRACT**

WHITE STREET HMA RESURFACING WITH MILLING PROJECT (11th – 21st STREET)

THIS IMPROVEMENT CONTRACT (the Contract), made in triplicate, dated for reference purposes the 23rd day of April, 2014, between the City of Dubuque, Iowa, by its City Manager, through authority conferred upon the City Manager by its City Council (City) and River City Paving, a Division of Mathy Construction, of the City of Dubuque, Iowa.

For and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

CONTRACTOR AGREES:

1. To furnish all material and equipment and to perform all labor necessary for the White Street HMA Resurfacing with Milling (11th – 21st Street) (the Project).

The Project shall be made to the established grade and to the grades as shown on the plans on file in the City Engineer's office for this Project; in strict accordance with the requirements of the laws of the State of Iowa and ordinances of the City of Dubuque relating to public works, and in accordance with the Contract Document shall of which provisions and documents are each and all hereby referred to and made a part of this Contract just as much as if the detail statements thereof were repeated herein.

2. Contract Documents shall mean and include the following: All ordinances and resolutions heretofore adopted by the City Council having to do with the Project; the Notice to Bidders; the Contractor's Proposal; and the Plans, Specifications, and General Requirements as adopted by the City Council for the Project.
3. All materials used by the Contractor in the Project shall be the best of their several kinds and shall be put in place to the satisfaction of the City Manager.
4. The Contractor shall remove any materials rejected by the City Manager as defective or improper, or any of said work condemned as unsuitable or defective, and the same shall be replaced or done anew to the satisfaction of the City Manager at the cost and expense of the Contractor.
5. Five percent (5%) of the Contract price shall be retained by the City for a period of thirty (30) days after final completion and acceptance of the Project by the City Council to pay any claim that may be filed within said time for labor and materials done and furnished in connection with the performance of this Contract and for a longer period if such claims are not adjusted within that time, as provided in Iowa Code Chapter 573. The City shall also retain additional sums to protect itself against any claim that has been filed against it for damages to persons or property arising

through the prosecution of the work and such sums shall be held by the City until such claims have been settled, adjudicated or otherwise disposed of.

6. The Contractor has read and understands the specifications including General Requirements and has examined and understands the plans herein referred to and agrees not to plead misunderstanding or deception because of estimates of quantity, character, location or other conditions surrounding the same.
7. In addition to the guarantee provided for in the specifications, the Contractor shall also make good any other defect in any part of the Project due to improper construction notwithstanding the fact that said Project may have been accepted and fully paid for by the City, and the Contractor's bond shall be security therefore.
8. The Contractor shall fully complete the Project under this Contract on or before October 31, 2014.
9. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Contract, provided that such claim, damages, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of property (other than the Project itself) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, the Contractor's subcontractor, or anyone directly or indirectly employed by the Contractor or the Contractor's subcontractor or anyone for whose acts the Contractor or the Contractor's subcontractor may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

THE CITY AGREES:

Upon the completion of the Contract, and the acceptance of the Project by the City Council, the City agrees to pay the Contractor as full compensation for the complete performance of this Contract, the amount determined for the total number of units completed at the unit prices stated in the Contractor's Proposal and less any liquidated damages provided for in the Contract Documents. The number of units stated in the plans and specifications is approximate only and the final payment shall be made by the work covered by the Contract.

CONTRACT AMOUNT \$ 1,088,819.59

FURTHER CONDITIONS

The Contractor hereby represents and guarantees that it has not, nor has any other person for or in its behalf, directly or indirectly, entered into any arrangement or agreement with any other bidder, or with any public officer, whereby it has paid or is to pay any other bidder or public officer any sum of money or anything of value whatever in order to obtain this Contract; and it has not, nor has another person for or in its behalf directly or indirectly, entered into any agreement or arrangement with any other person, firm, corporation or association which tends to or does lessen or destroy free competition in the letting of this Contract and agrees that in case it hereafter be established that such representations or guarantees, or any of them are false, it will forfeit and pay not less than ten percent (10%) of the Contract price but in no event be less than \$ 500.00 (Five Hundered Dollars) as liquidated damages to the City.

The surety on the bond furnished for this Contract, shall in addition to all other provisions, be obligated to the extent provided for by Iowa Code § 573.6, relating to this Contract, which provisions apply to said bond.

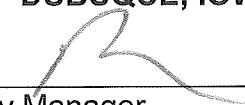
The Contractor agrees, and its bond shall be surety therefore, that it will keep and maintain the Project in good repair for a period of two years after acceptance of the same by the City Council and its bond shall be security therefore.

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The City of Dubuque and the Contractor agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1958 (H) et. seq.) and the Federal Water Pollution Act (33 U.S.C. 1368 et. seq.) as amended, Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15). Contractor shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) and Department of Labor Regulations (29 CFR, Part 5).

CITY OF DUBUQUE, IOWA

By


City Manager

PRINCIPAL:

River City Paving - Div. of Matrix
Contractor

By:

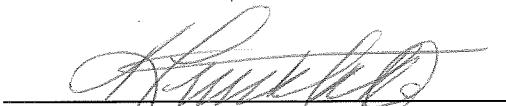

Signature

V.P.

Title

CERTIFICATE OF CITY CLERK

This is to certify that a certified copy of the above Contract has been filed in my office on the 5th day of May, 2014.



Kevin S. Firnstahl, CMC City Clerk

**CITY OF DUBUQUE, IOWA
PERFORMANCE, PAYMENT AND MAINTENANCE BOND**

KNOWN ALL MEN BY THESE PRESENTS: That River City Paving, a Division of Mathy Construction, as Principal (Contractor) and Western Surety Company as Surety are held firmly bound unto the City of Dubuque, Iowa (City), in the penal sum of \$ 1,088,819.59 the same being 100% of the total price of the Contract for the Project herein referred to, lawful money of the United States of America, well and truly to be paid to said City of Dubuque, and to all other parties who, under the provisions of the laws of Iowa, are intended to be protected and secured hereby for which payment we bind ourselves, our heirs, executors, successors and assigns, jointly and severally by these presents.

Dated at Dubuque, Iowa, this 28th day of April, 2014, and duly attested and sealed.

WHEREAS, the said Contractor by a Contract dated April 23, 2014, incorporated herein by reference, has agreed with said City of Dubuque to perform all labor and furnish all materials required to be performed and furnished for the White Street HMA Resurfacing Project, from 11th to 21st Street (the Project) according to the Contract and Construction Documents prepared therefore.

It is expressly understood and agreed by the Contractor and Surety bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE BOND:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract and Contract Documents, by reference made a part hereof, for the Project, and shall indemnify and save harmless the City from all outlay and expense incurred by the City by reason of the Contractor's default of failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT BOND:** The Contractor and the Surety shall pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price which the City is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable to said persons, firms, or corporations unless the claims of said claimants

against said portion of the Contract price shall have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Chapter 573, Code of Iowa, which by this reference is made a part hereof as though fully set out herein.

3. MAINTENANCE BOND: The Contractor and the Surety hereby agree, at their own expense:

- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of two (2) year(s) from the date of acceptance of the work under the Contract by the City Council of the City of Dubuque, Iowa, by reason of defects in workmanship or materials used in construction of said work;
- B. To keep all work in continuous good repair; and
- C. To pay the City the reasonable costs of monitoring and inspection to assure that any defects are remedied, and to repay the City all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the City at the time such work was accepted.

NOW, THEREFORE, the condition of this obligation is such that if the said Contractor shall perform all of the work contemplated by the Contract in a workmanlike manner and in strict compliance with the plans and specifications, and will pay all claims for labor and materials used in connection with said Project, to indemnify the said City for all damages, costs and expense incurred by reason of damages to persons or property arising through the performance of said Contract, and will reimburse the City for any outlay of money which it may be required to make in order to complete said Contract according to the Construction Documents and will maintain in good repair said Project for the period specified in the Contract where this bond is obligated for maintenance, and will faithfully comply with all of the provisions of Section 573 of the Code of Iowa, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

All the conditions of this bond must be fully complied with before the Contractor or the Surety will be released.

The Contract, Contractor's Proposal, and Construction Documents shall be considered as a part of this Bond just as if their terms were repeated herein.

Dated at Dubuque, Iowa this 28th day of April, 2014.

CITY OF DUBUQUE, IOWA

By:


City Manager

PRINCIPAL

Riving City Paving, A Division of
Mathy Construction Company

Contractor

By:


Signature


U.P.

Title

SURETY

Western Surety Company

Surety Company

By:


Signature

Nina E. Werstein, Attorney-in-Fact

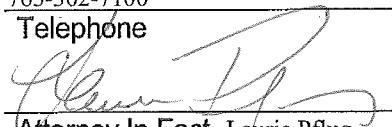
Title

1600 Utica Avenue South, Suite 600
Minneapolis, MN 55416

City, State, Zip Code

763-302-7100

Telephone

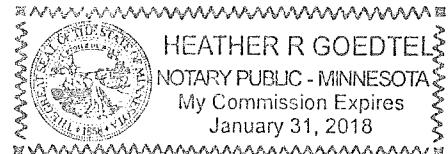

Attorney In Fact, Laurie Pflug

Surety Acknowledgment

State of MINNESOTA }
County of Hennepin } ss.

On this 28th day of April 2014, before me personally came Nina E. Werstein, to me known, who being by me duly sworn, did depose and say that she is the Attorney-in-Fact of Western Surety Company described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to said instruments is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/she/his name to it by like order.

Christopher R. Smith
Notary Public



Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Nina E. Werstein, Laurie Pflug, Jill N. Swanson, Dennis G. Loots, Brian D. Carpenter, Nicole Langer, Craig Olmstead, Jessica Hoff, Heather R. Goedtel, Michelle Sylvester, Individually

of Minneapolis, MN, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 18th day of September, 2013.

WESTERN SURETY COMPANY



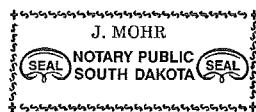
Paul T. Bruflat, Vice President

State of South Dakota } ss
County of Minnehaha }

On this 18th day of September, 2013, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2015



CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 28th day of April, 2014.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.