

RESOLUTION 91514-0111

**APPROVING CONTRACT AND BOND
ON THE WEED PARK TO WILDCAT DEN TRAIL**

WHEREAS, this Council has awarded the contract for the Weed Park to Wildcat Den Trail project to Sulzberger Excavating, Inc. dated the 13th day of January, 2011, in the amount of \$448,578.90; 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;

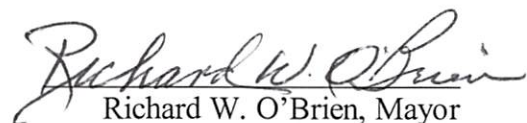
NOW, THEREFORE, IT IS RESOLVED that:

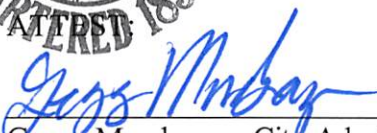
1. The above contract between the City of Muscatine, Iowa and Sulzberger Excavating, Inc. dated the 13th day of January, 2011, in the amount of \$448,578.90 is approved.
2. The performance bond accompanying such contract, wherein Sulzberger Excavating, Inc. appears as principal and Berkley Regional Insurance 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 20th DAY OF JANUARY, 2011.




Richard W. O'Brien, Mayor


Gregg Mandsager, City Administrator

CONTRACT

FA96 (Form 650019)
11-05

Letting Date: December 21, 2010 Contract ID: 70-5330-613 Bid Order No.: 152
County: MUSCATINE Project Engineer: CITY OF MUSCATINE
Cost Center: 849300 Object Code: 890 DBE Commitment \$11,500.00
Contract Work Type: HMA SIDEWALK/TRAIL

This agreement made and entered by and between the CITY OF MUSCATINE CONTRACTING AUTHORITY,
AND
SULZBERGER EXCAVATING COMPANY OF MUSCATINE, IA, (SU061), CONTRACTOR

It is agreed that the notice and instructions to bidders, the proposal filed by the Contractor, the specifications, the plan, if any, for project(s) listed below, together with Contractor's performance bond, are made a part hereof and together with this instrument constitute the contract. This contract contains all of the terms and conditions agreed upon by the parties hereto. A true copy of said plan is now on file in the office of the Contracting Authority under date of 12/16/2010.

PROJECT: EDP-5330(613)--7Y-70 COUNTY: MUSCATINE
WORK TYPE: HMA SIDEWALK/TRAIL ACCOUNTING ID: 28419
ROUTE: HMA TRAIL LENGTH (MILES): 9.2
LOCATION: WEED PARK TO WILDCAT DEN TRAIL
FEDERAL AID - PREDETERMINED WAGES ARE IN EFFECT

The specifications consist of the Standard Specifications for Highway and Bridge Construction, Series 2009 of the Iowa Department of Transportation plus the following Supplemental Specifications, Special Provisions, and addendums: DBE--2010, DBE-101221, FHWA-1273.04, GS-09002, IA10-1.2

Contractor, for and in considerations of \$448,578.90 payable as set forth in the specifications constituting a part of this contract, agrees to construct various items of work and/or provide various materials or supplies in accordance with the plans and specifications therefore, and in the locations designated in the Notice to Bidders.

Contractor certifies by signature on this contract, under pain of penalties for false certification, that the Contractor has complied with Iowa Code Section 452A.17(8) as amended, if applicable, and Iowa Code Section 91C.5 (Public Registration Number), if applicable.

In consideration of the foregoing, Contracting authority hereby agrees to pay the Contractor promptly and according to the requirements of the specifications the amounts set forth, subject to the conditions as set forth in the specifications.

It is further understood and agreed that the above work shall also be commenced or completed in accordance with Page 1B of this Contract and assigned Proposal Notes.

Time is of the essence for this contract. To accomplish the purpose herein expressed, Contracting authority and Contractor have signed this and one other identical instrument as of the 13th day of January ~~2011~~ FEB 07 2011.

By Richard W. Buein
Contracting Authority

Roger E. Buein
Iowa DOT Concurrence

By Billy S. Puly
Contractor

Letting Date: December 21, 2010 Contract ID: 70-5330-613

Bid Order No. : 152

It is further understood and agreed that the above work shall be commenced or completed in accordance with the following schedule:

SITE NUMBER	CONTRACT PERIOD /SITE DESCRIPTION	LIQUIDATED DAMAGES
	CONTRACT LATE START DATE 08/29/2011 35 WORKING DAYS	\$400.00

CONTRACT NOTES

CONTRACT SCHEDULE OF PRICES

Vendor No.: SU061 Bid Order No.: 152
 Contract ID No.: 70-5330-613 Letting Date: December 21, 2010
 Primary Work Type: HMA SIDEWALK/TRAIL 10:00 A.M.
 Primary County: MUSCATINE

Line No	Item Number Item Description	Item Quantity and Unit	Unit Price Dollars Cts	Bid Amount Dollars Cts
SECTION 0001 TRAIL ITEMS - DIVISION 1				
0010	2101-0850001 CLEARING AND GRUBBING	1.240 ACRE	2,580.00000	3,199.20
0020	2102-2710070 EXCAVATION, CLASS 10, ROADWAY AND BORROW	3,886.000 CY	9.20000	35,751.20
0030	2105-8425015 TOPSOIL, STRIP, SALVAGE AND SPREAD	2,621.000 CY	5.00000	13,105.00
0040	2115-0100000 MODIFIED SUBBASE	2,333.000 CY	30.62000	71,436.46
0050	2123-7450020 SHOULDER FINISHING, EARTH	157.480 STA	90.00000	14,173.20
0060	2213-6745500 REMOVAL OF CURB	0.600 STA	1,430.00000	858.00
0070	2303-6911000 HOT MIX ASPHALT PAVEMENT SAMPLES	LUMP	LUMP	4,200.00
0080	2402-2720100 EXCAVATION, CLASS 20, FOR ROADWAY PIPE CULVERT	248.000 CY	5.00000	1,240.00
0090	2416-0100015 APRONS, CONCRETE, 15 IN. DIA.	4.000 EACH	689.00000	2,756.00
0100	2416-0100018 APRONS, CONCRETE, 18 IN. DIA.	6.000 EACH	745.00000	4,470.00
0110	2416-0100036 APRONS, CONCRETE, 36 IN. DIA.	2.000 EACH	1,147.00000	2,294.00

CONTRACT SCHEDULE OF PRICES

Vendor No.: SU061
 Contract ID No.: 70-5330-613
 Primary Work Type: HMA SIDEWALK/TRAIL
 Primary County: MUSCATINE

Bid Order No.: 152
 Letting Date: December 21, 2010
 10:00 A.M.

Line No	Item Number Item Description	Item Quantity and Unit	Unit Price		Bid Amount	
			Dollars	Cts	Dollars	Cts
0120	2416-0101036 REMOVE AND REINSTALL CONCRETE PIPE APRONS LESS THAN OR EQUAL TO 36 IN.	3.000 EACH	535.00000		1,605.00	
0130	2416-1165015 CULVERT, 2000D CONCRETE ENTRANCE PIPE, 15 IN. DIA.	70.000 LF	62.49000		4,374.30	
0140	2416-1180018 CULVERT, CONCRETE ROADWAY PIPE, 18 IN. DIA.	79.000 LF	70.65000		5,581.35	
0150	2416-1180024 CULVERT, CONCRETE ROADWAY PIPE, 24 IN. DIA.	7.000 LF	164.50000		1,151.50	
0160	2416-1180036 CULVERT, CONCRETE ROADWAY PIPE, 36 IN. DIA.	63.000 LF	75.56000		4,760.28	
0170	2507-6800042 REVETMENT, CLASS D	170.000 TON	26.50000		4,505.00	
0180	2511-0301500 RECREATIONAL TRAIL, HOT MIX ASPHALT, 5 IN.	8,660.000 SY	21.97000		190,260.20	
0190	2511-0310100 SPECIAL COMPACTION OF SUBGRADE FOR RECREATIONAL TRAIL	78.740 STA	245.00000		19,291.30	
0200	2511-6745900 REMOVAL OF SIDEWALK	16.800 SY	6.00000		100.80	
0210	2511-7526006 SIDEWALK, P.C. CONCRETE, 6 IN.	88.890 SY	143.75000		12,777.94	
0220	2511-7528100 DETECTABLE WARNINGS FOR CURB RAMPS	128.000 SF	21.00000		2,688.00	

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Line No	Item Number Item Description	Item Quantity and Unit	Unit Price		Bid Amount	
			Dollars	Cts	Dollars	Cts
0230	2519-3300600 FENCE, SAFETY	200.000 LF	3.50000		700.00	
0240	2526-8285000 CONSTRUCTION SURVEY	LUMP	LUMP		3,625.00	
0250	2527-9263109 PAINTED PAVEMENT MARKING, WATERBORNE OR SOLVENT-BASED	3.853 STA	105.00000		404.57	
0260	2528-8445110 TRAFFIC CONTROL	LUMP	LUMP		1,850.00	
0270	2533-4980005 MOBILIZATION	LUMP	LUMP		9,300.00	
0280	2601-2636043 SEEDING AND FERTILIZING (RURAL)	3.280 ACRE	840.00000		2,755.20	
0290	2601-2636044 SEEDING AND FERTILIZING (URBAN)	1.220 ACRE	1,260.00000		1,537.20	
0300	2601-2638352 SLOPE PROTECTION, WOOD EXCELSIOR MAT	200.000 SQ	17.50000		3,500.00	
0310	2601-2639010 SODDING	248.000 SQ	38.00000		9,424.00	
0320	2601-2643110 WATERING FOR SOD, SPECIAL DITCH CONTROL, OR SLOPE PROTECTION	0.070 MGAL	60.00000		4.20	
0330	2602-0000020 SILT FENCE	150.000 LF	3.15000		472.50	

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Line No	Item Number Item Description	Item Quantity and Unit	Unit Price		Bid Amount	
			Dollars	Cts	Dollars	Cts
0340	2602-0000030 SILT FENCE FOR DITCH CHECKS	250.000 LF	3.15000		787.50	

SECTION 0002 SIGNAL ITEMS - DIVISION 2
 100% CITY OF MUSCATINE

0350	2599-9999005 ('EACH' ITEM) RADAR SPEED SIGN	2.000 EACH	6,820.00000		13,640.00	
TOTAL BID						448,578.90

PERFORMANCE AND PAYMENT BOND

Bond No. 0132680

KNOW ALL MEN BY THESE PRESENTS THAT _____

Sulzberger Excavating Company
(Here insert the name and address of legal title of the Contractor)

a Principal, hereinafter called the Contractor and

Berkley Regional 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 Four hundred forty eight thousand, five hundred
(Here insert amount of Contract) seventy eight and 90/100 dollars

DOLLARS (\$ 448,578.90) 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 January 13, 2011, entered into a Contract with Owner for

Project EDP-5330(613)--7Y-70 HMA Sidewalk/Trail
Weed Park to Wildcat Den Trail

in accordance with drawings and specifications prepared by the City Engineer, 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 13 DAY OF January, 2011.

IN THE PRESENCE OF:

[Signature]
WITNESS

[Signature]
PRINCIPAL
Vice President
TITLE

Berkley Regional Insurance Company
SURETY

[Signature]
Jeff R. Miller, Attorney-in-Fact

POWER OF ATTORNEY
BERKLEY REGIONAL INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY REGIONAL INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Urbandale, Iowa, has made, constituted and appointed, and does by these presents make, constitute and appoint:

Michael Harrison, Jeff Miller, Julie Brockert or Cheryl Harless of Miller & Harrison, Inc. dba Miller & Harrison Insurance of Muscatine, IA

its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed Five Million and 00/100 Dollars (\$5,000,000.00), to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on August 21, 2000:

"RESOLVED, that the proper officers of the Company are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 25 day of September, 2008.

Attest:

Berkley Regional Insurance Company

(Seal)

By Ira S. Lederman
Senior Vice President & Secretary

By Robert P. Cole
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 25 day of September, 2008, by Robert P. Cole and Ira S. Lederman who are sworn to me to be the Senior Vice President, and the Senior Vice President and Secretary, respectively, of Berkley Regional Insurance Company.

EILEEN KILLEEN
NOTARY PUBLIC
MY COMMISSION EXPIRES JUNE 30, 2012

Eileen Killeen
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY REGIONAL INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 13 day of January, 2011.

(Seal)

John F. Beers



MEMO

To: Randy Hill
From: Jon Lutz
Date: 1/18/11
Re: Weed Park to Wildcat Den Trail

The Weed Park to Wildcat Den Trail project has been let through the Iowa Department of Transportation. This project was awarded to Sulzberger Excavating, Inc. at the City Council meeting on January 6, 2011. At this time, the City requests approval of a Resolution to Approve the Contract and Bond for this project.