

RESOLUTION 88926-1203

**APPROVING CONTRACT AND BOND
FOR THE MUSCATINE ART CENTER
EXTERIOR RESTORATION PROJECT**

WHEREAS, this Council has awarded the contract for the Muscatine Art Center Exterior Restoration Project to E & H Restoration, L.L.C. dated the 6th day of November 2003, in the amount of \$71,864.00; 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;

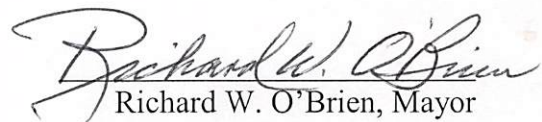
NOW, THEREFORE, IT IS RESOLVED that:

1. The above contract between the City of Muscatine, Iowa and E & H Restoration, L.L.C. dated the 6th day of November 2003, in the amount of \$71,864.00 is approved.
2. The performance bond accompanying such contract, wherein E & H Restoration L.L.C. appears as principal and Merchants Bonding Co. (Mutual) 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 4th DAY OF DECEMBER 2003.




Richard W. O'Brien, Mayor


A. J. Johnson, City Clerk

CONTRACT

THIS AGREEMENT, made and entered into this 20th day of November, 2003, by and between the City of Muscatine, Iowa, party of the first part, hereinafter referred to as the "City" and E & H Restoration, L.L.C. 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 Muscatine Art Center Exterior Restoration Project, Muscatine, Iowa, all in strict accordance with the Contract Documents prepared by City of Muscatine, Department of Public Works and David Arbogast, Architectural Conservator.

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 not earlier than thirty (30) days from the final acceptance of said work by the City.

The Contractor shall provide a surety bond in the amount of 100% of the contract.

The contract shall be completed by October 31, 2004.

The contract amount is \$71,864.00.

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

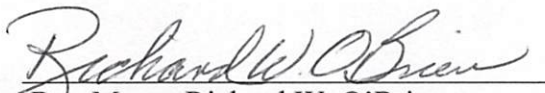
- | | |
|---------------------------|----------------------------|
| a. This Agreement | f. Signed Copy of Proposal |
| b. Addenda Numbers -0- | g. Special Conditions |
| c. Plans | h. Detailed Specifications |
| d. Notice to Bidders | i. Standard Specifications |
| e. Instruction to Bidders | j. General Conditions |

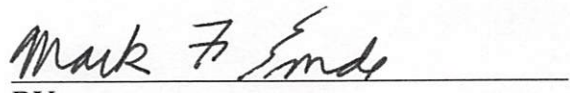
THIS AGREEMENT, together with other documents enumerated in this ARTICLE 3, with said other documents are as fully a part of the contract as if hereto attached or herein repeated, forms the contract between the parties hereto. In the event that any provision in any component part of this contract conflicts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

E & H Restoration, L.L.C.
CONTRACTOR

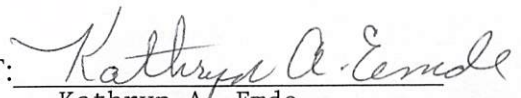

By: Mayor Richard W. O'Brien


BY Mark F. Emde



ATTEST: 
By: City Clerk A. J. Johnson

Vice-president
TITLE

ATTEST: 
Kathryn A. Emde

Sec./Treas.
TITLE

PERFORMANCE AND PAYMENT BOND

BOND #IAC 34418

KNOW ALL MEN BY THESE PRESENTS THAT, a Principal, hereinafter called the Contractor and E & H RESTORATION, L.L.C.

MERCHANTS BONDING COMPANY (MUTUAL)

(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 Seventy-one Thousand Eight Hundred Sixty-Four DOLLARS (\$71,864.00) 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 November 20, 2003, entered into a Contract with Owner for the

Muscatine Art Center Exterior Restoration Project

in accordance with drawings and specifications prepared by the Department of Public Works, City of Muscatine, Iowa, and Mr. David Arbogast, Architectural Conservator, 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.

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

E & H RESTORATION, L.L.C.
CONTRACTOR

Richard W. O'Brien
By: Mayor Richard W. O'Brien

Mark F. Emde
BY Mark F. Emde



ATTEST: A. J. Johnson
By: City Clerk A. J. Johnson

Vice-president
TITLE

ATTEST: Kathryn A. Emde
Kathryn A. Emde

Sec/Treas.
TITLE

MERCHANTS BONDING COMPANY (MUTUAL)

Thomas R. Schwab
BY:
THOMAS R. SCHWAB ATTORNEY-IN-FACT

Maryland Andrews
ATTEST

Merchants Bonding Company

(Mutual)

POWER OF ATTORNEY

Bond No.

Know All Persons By These Presents, that the MERCHANTS BONDING COMPANY (MUTUAL), a corporation duly organized under the laws of the State of Iowa, and having its principal office in the City of Des Moines, County of Polk, State of Iowa, hath made, constituted and appointed, and does by these presents make, constitute and appoint

Phillip A. Trissel, Carelton E. Toole, Daniel P. Curran, Mark J. Schwab, Robert D.S. Karl, Deanna L. Schwab, Carol VanHoorebeck, Thomas R. Schwab

of Davenport and State of Iowa its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver in its behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

TWO MILLION FIVE HUNDRED THOUSAND (\$2,500,000.00) DOLLARS

and to bind the MERCHANTS BONDING COMPANY (MUTUAL) thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the MERCHANTS BONDING COMPANY (MUTUAL), and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following Amended Substituted and Restated By-Laws adopted by the Board of Directors of the MERCHANTS BONDING COMPANY (MUTUAL) on November 16, 2002.

ARTICLE II, SECTION 8 - The Chairman of the Board or President or any Vice President or Secretary shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

ARTICLE II, SECTION 9 - 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 obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed.

In Witness Whereof, MERCHANTS BONDING COMPANY (MUTUAL) has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this 1st day of January, 2003.



MERCHANTS BONDING COMPANY (MUTUAL)

By

Larry Taylor

President

STATE OF IOWA
COUNTY OF POLK ss.

On this 1st day of January, 2003, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL), the corporation described in the foregoing instrument, and that the Seal affixed to the said instrument is the Corporate Seal of the said Corporation and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



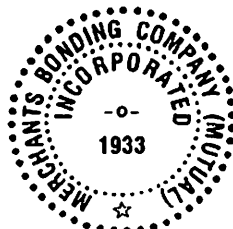
Marilyn Boyd

Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL), do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said MERCHANTS BONDING COMPANY (MUTUAL), which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Company on this 20 day of ~~NOVEMBER~~ 2003



William Warner Jr.

Secretary

Donelson, Fran

From: Mann, Connie
Sent: Wednesday, November 26, 2003 11:44 AM
To: A. J. Johnson (E-mail)
Cc: Donelson, Fran
Subject: Resolution Approving Contract & Bond for Art Center Restoration Project



Contract and
Bond.pdf

Here is Randy's file with attachments.

AJ -

The City Council awarded the contract for the Muscatine Art Center Exterior Restoration Project to E & H Restoration, L.L.C. at the November 6, 2003 Council Meeting. E & H Restoration has provided us with the signed contract(s) and Performance & Payment Bond required by the City. It is necessary for the city council to approve the contract and bond via a resolution (see attached).

As explained previously, the scope of work to be completed involves an exterior renovation of the Musser building including cleaning, repairing, re-pointing masonry and sealing stonework, painting trim, re-glazing windows, replacing rotted wood and replacing 76 storm window. \$84,000 is budgeted for this project with a contract award of \$71,864.00.

If you have any questions, please contact me.



Contract and
Bond.pdf



award.res.doc