

RESOLUTION 89140-0804

APPROVING CONTRACT AND BOND
FOR THE TIPTON ROAD SEWER EXTENSION PROJECT

WHEREAS, this Council has awarded the contract for the **Tipton Road Sewer Extension Project** to DeLong-Keith Construction, Inc., dated the 15th day of July, 2004, in the amount of \$94,369.60; 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:

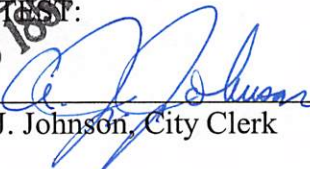
1. The above contract between the City of Muscatine, Iowa and DeLong-Keith Construction, Inc., dated the 5th day of August, 2004, in the amount of \$94,369.60 is approved.
2. The performance and payment bond accompanying such contract, wherein DeLong-Keith Construction, Inc. appears as principal and United Fire & 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 AUGUST, 2004.




Richard W. O'Brien, Mayor


A. J. Johnson, City Clerk

CONTRACT

THIS AGREEMENT, made and entered into this 5th day of August, 2004, by and between the City of Muscatine, Iowa, party of the first part, hereinafter referred to as the "City" and Delong-Keith Construction, Inc., 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 **Tipton Road Sewer Extension project #100-04-A**, Muscatine, Iowa, all in strict accordance with the Contract Documents prepared by Martin & Whitacre Surveyors & Engineers, Inc.

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 Engineer or his authorized representative. 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 and shall guarantee the maintenance of the improvement for a period of two (2) years after its completion and acceptance by the City.

The contract shall be completed by November 15, 2004.

Total Contract Price: \$ 94,369.60

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

- | | |
|---------------------------|------------------------------------|
| a. This Agreement | f. Signed Copy of Proposal |
| b. Addenda Number 1 | g. Special Conditions |
| c. Plans | h. Detailed Specifications |
| d. Notice to Bidders | i. Standard Specifications (SUDAS) |
| 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. Section 1102.7 of the Iowa DOT specifications regarding Disadvantaged Business Enterprises (DBEs) shall not apply to this contract.

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

CITY OF MUSCATINE, IOWA

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



A. J. Johnson
A. J. Johnson, City Clerk

Delong-Keith Construction, Inc.
CONTRACTOR

By: Dana DeLong Catterson
President
TITLE

ATTEST: Ivan Le Z
Secretary/Treas.
TITLE

PERFORMANCE AND PAYMENT BOND

Bond No. 54-149528

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

United Fire & Casualty Company, P.O. Box 73909, Cedar Rapids, IA 52407
(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 Ninety Four Thousand, Three Hundred Sixty Nine & 60/100----- DOLLARS (\$ 94,369.60) 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 will by written agreement dated August 5, 2004, enter into a Contract with Owner for the

TIPTON ROAD SEWER EXTENSION PROJECT NO. 100-04-A

in accordance with drawings and specifications prepared Martin & Whitacre Surveyors & Engineers, Inc., which Contract is by reference made apart 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 5th DAY OF August, A.D. 2004.

IN THE PRESENCE OF:


WITNESS

DeLong-Keith Construction, Inc.

PRINCIPAL

TITLE

United Fire & Casualty Company
SURETY


Janet Alessio, Attorney-in-fact



United Fire Group
Fidelity & Surety Department

POLICYHOLDER DISCLOSURE

NOTICE OF TERRORISM INSURANCE COVERAGE SURETY BONDS

You should know that, effective November 26, 2002, any losses sustained by the surety caused by certified acts of terrorism would be partially reimbursed to the surety by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the surety providing the coverage. The portion of your bond premium that is attributable to coverage for acts of terrorism is \$ 0.00. Before any charges are added for terrorism coverage in future surety products you purchase, you will be able to make a coverage election for a then specified premium charge.

The existence of the federal terrorism insurance program does not affect the obligations you assume in the indemnity agreement.

HOME OFFICE: 118 Second Ave. SE, PO Box 73909, Cedar Rapids, IA 52407-3909 Phone: 319-399-5700 FAX: 319-399-5425

UNITED FIRE & CASUALTY COMPANY
HOME OFFICE - CEDAR RAPIDS, IOWA
CERTIFIED COPY OF POWER OF ATTORNEY
(Original on file at Home Office of Company - See Certification)

KNOW ALL MEN BY THESE PRESENTS, That the UNITED FIRE & CASUALTY COMPANY, a corporation duly organized and existing under the laws of the State of Iowa, and having its principal office in Cedar Rapids, State of Iowa, does make, constitute and appoint DIANNE S. RILEY, OR JANET ALESSIO, OR CRAIG E. HANSEN, OR JAY D. FREIERMUTH, OR MARTHA LATHRUM, OR BRIAN M. DEIMERLY, ALL INDIVIDUALLY OF DES MOINES, IA OFFICE C. JAMES CUTLER, OR JASON W. HELICKSON, OR SUZAN K. BLAKE- BUNDY, ALL INDIVIDUALLY OF CEDAR RAPIDS, IA OFFICE OF DES MOINES IA

its true and lawful Attorney(s)-in-Fact with power and authority hereby conferred to sign, seal and execute in its behalf all lawful bonds, undertakings and other obligatory instruments of similar nature as follows: Any and All Bonds and to bind UNITED FIRE & CASUALTY COMPANY thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of UNITED FIRE & CASUALTY COMPANY and all the acts of said Attorney, pursuant to the authority hereby given are hereby ratified and confirmed.

The Authority hereby granted is continuous and shall remain in full force and effect until revoked by UNITED FIRE & CASUALTY COMPANY.

This power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by Board of Directors of the Company on April 18, 1973.

"Article V - Surety Bonds and Undertakings"

Section 2, Appointment of Attorney-in-Fact. "The President or any Vice President, or any other officer of the Company may, from time to time, appoint by written certificates attorneys-in-fact to act in behalf of the Company in the execution of policies of insurance, bonds, undertakings and other obligatory instruments of like nature. The signature of any officer authorized hereby, and the Corporate seal, may be affixed by facsimile to any power of attorney or special power of attorney or certification of either authorized hereby; such signature and seal, when so used, being adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed. Such attorneys-in fact, subject to the limitations set forth in their respective certificates of authority shall have full power to bind the Company by their signature and execution of any such instruments and to attach the seal of the Company thereto. The President or any Vice President, the Board of Directors or any other officer of the Company may at any time revoke all power and authority previously given to any attorney-in-fact.

IN WITNESS WHEREOF, the UNITED FIRE & CASUALTY COMPANY has caused these presents to be signed by its vice president and its corporate seal to be hereto affixed this 28th day of March, 2003



UNITED FIRE & CASUALTY COMPANY

By *Randy A. Ramlo* Vice President

State of Iowa, County of Linn, ss:

On 28th day of March, 2003, before me personally came Randy A. Ramlo to me known, who being by me duly sworn, did depose and say; that he resides in Cedar Rapids, State of Iowa; that he is a Vice President of the UNITED FIRE & CASUALTY COMPANY, the corporation 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.



Patti Waddell
Notary Public
My commission expires: 10/26/2004

I, the undersigned officer of the UNITED FIRE & CASUALTY COMPANY, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the by-laws of said Company as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto subscribed my name and affixed the corporate seal of the said Company this 5th day of August 2004.



David A. Gray Secretary