

**RESOLUTION** 89139-0804

**APPROVING CONTRACT AND BOND  
FOR 2004 CBD STREETScape IMPROVEMENT PROJECT**

WHEREAS, this Council has awarded the contract for the 2004 CBD Streetscape Improvement Project to 3D Concrete dated the 19<sup>th</sup> day of July 2004, in the amount of \$75,500.00; 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 3D Concrete dated the 19<sup>th</sup> day of July, 2004, in the amount of \$75,500.00 is approved.
2. The performance bond accompanying such contract, wherein 3D Concrete appears as principal and Developers Surety & Indemnity 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 5<sup>th</sup> DAY OF AUGUST, 2004.



  
A. J. Johnson, City Clerk

  
Richard W. O'Brien, Mayor

## FORM OF CONTRACT

THIS AGREEMENT, made and entered into this 19th day of July, 2004, by and between the City of Muscatine, Iowa, party of the first part, hereinafter referred to as the "City" and 3-D Concrete, 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 2004 Fuller Park Trail, 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 not 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.

The contract shall be completed by October 31, 2004.

The contract amount is \$75,500.00.

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.

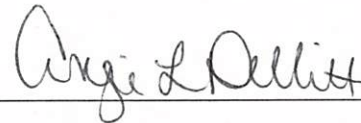
CITY OF MUSCATINE, IOWA

  
By: Mayor Richard W. O'Brien

3-D Concrete, Inc.  
CONTRACTOR

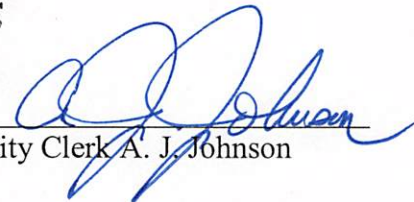
BY 

Sec./Treas.  
TITLE

ATTEST: 

Office Manager  
TITLE



  
City Clerk A. J. Johnson

**PERFORMANCE AND PAYMENT BOND**

Bond No. 889606P

KNOW ALL MEN BY THESE PRESENTS THAT, 3-D Concrete, Inc., as Principal, hereinafter called the Contractor and

Developers Surety & Indemnity Company      1603 22nd Street    Ste:200    West Des Moines, Iowa  
(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 Five Thousand Five Hundred -----.00 DOLLARS (\$ 75,500.00) 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 July 19, 2004, entered into a Contract with Owner for the

**2004 CBD STREETScape  
IMPROVEMENT 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. 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 19th DAY OF July, 2004

A.D. 2004.

IN THE PRESENCE OF:

3-D Concrete, Inc.

By: *John W. Pellet*

PRINCIPAL

Sec./Treas.

TITLE

*R. D. Lee*  
WITNESS

Developers Surety & Indemnity Company

SURETY

By: *Daniel P. Curran*

Daniel P. Curran Attorney-In-Fact

*Alysa Curran*  
WITNESS



## **DISCLOSURE RIDER**

### **Terrorism Risk Insurance Act of 2002**

The Terrorism Risk Insurance Act of 2002 created a three-year program under which the Federal Government will share in the payment of covered losses caused by certain events of international terrorism. The Act requires that we notify you of certain components of the Act, and the effect, if any, the Act will have on the premium charged for this bond.

Under this program, the Federal Government will cover 90% of the amount of covered losses caused by certified acts of terrorism, as defined by the Act. The coverage is available only when aggregate losses resulting from a certified act of terrorism exceed \$5,000,000.00. Insurance carriers must also meet a variable deductible established by the Act. The Act also establishes a cap of \$1,000,000,000.00 for which the Federal Government or an insurer can be responsible.

Participation in the program is mandatory for specified lines of property and casualty insurance, including surety insurance. The Act does not, however, create coverage in excess of the amount of the bond, nor does it provide coverage for any losses that are otherwise excluded by the terms of the bond, or by operation of law.

No additional premium has been charged for the terrorism coverage required by the Act.

**Developers Surety and Indemnity Company**  
**Indemnity Company of California**  
17780 Fitch  
Irvine, CA 92614  
(949) 263 3300  
[www.inscodico.com](http://www.inscodico.com)

**POWER OF ATTORNEY FOR  
DEVELOPERS SURETY AND INDEMNITY COMPANY**  
PO BOX 19725, IRVINE, CA 92623 (949) 263-3300  
www.lnscoDico.com

KNOW ALL MEN BY THESE PRESENTS, that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY does hereby make, constitute and appoint:

**\*\*\*Phillip A. Trissel, Carleton E. Toole, Daniel P. Curran, Mark J. Schwab, Robert D.S. Karll, Deanna L. Schwab, Thomas R. Schwab, Carol Vanhoorebeck, jointly or severally\*\*\***

as its true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporation as surety, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as the corporation could do, but reserving to the corporation full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolution adopted by the Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY effective as of November 1, 2000:

RESOLVED, that the Chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the Attorney(s)-in-Fact named in the Powers of Attorney to execute, on behalf of the corporation, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporation be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY has caused these presents to be signed by its respective Executive Vice President and attested by its Secretary this 1st day of October, 2003.

By:   
David H. Rhodes, Executive Vice-President


By:   
Walter A. Crowell, Secretary

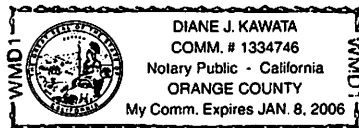


STATE OF CALIFORNIA            )  
  )SS.  
COUNTY OF ORANGE            )

On October 1, 2003, before me, Diane J. Kawata, personally appeared David H. Rhodes and Walter A. Crowell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal


Signature 



**CERTIFICATE**

The undersigned, as Senior Vice-President, Underwriting, of DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolution of the respective Boards of Directors of said corporation set forth in the Power of Attorney, is in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 19th day of July, 2004.

By:   
Wesley W. Cowling, Senior Vice-President, Underwriting

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
07/20/2004

PRODUCER (563)322-3521 FAX (563)322-1046  
Trissel Graham & Toole, Inc.  
220 Emerson Place  
Davenport, IA 52801  
Walter Zimmerer, CIC

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED 3-D Concrete, Inc.  
PO Box 308  
Aledo, IL 61231

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: EMC Insurance Company	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC	2X89560-04	11/11/2003	11/11/2004	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	2X89560-04	11/11/2003	11/11/2004	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	2X89560-04	11/11/2003	11/11/2004	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ \$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	2X89560-04	11/11/2003	11/11/2004	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Re: 2004 CBD Streetscape Sidewalk Project, Muscatine, IA

## CERTIFICATE HOLDER

City of Muscatine  
1459 Washington St  
Muscatine, IA 52761

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Daniel Curran, CPA/WZ

