

RESOLUTION 89166-0904

**APPROVING CONTRACT AND BOND
FOR THE 2004 FULLER PARK TRAIL**

WHEREAS, this Council has awarded the contract for the 2004 Fuller Park Trail Project to Sulzberger Excavating, Inc. dated the 19th day of August, 2004, in the amount of \$89,000.20; 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;

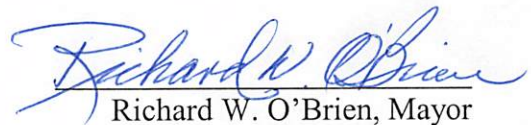
NOW, THEREFORE, IT IS RESOLVED that:

1. The above contract between the City of Muscatine, Iowa and Sulzberger Excavating, Inc. dated the 19th day of August 2004, in the amount of \$89,000.20 is approved.
2. The performance bond accompanying such contract, wherein Sulzberger Excavating, Inc. appears as principal and Merchants Bonding 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 2nd DAY OF SEPTEMBER, 2004.




Richard W. O'Brien, Mayor



Larry I. Wolf, Acting City Clerk

CONTRACT

THIS AGREEMENT, made and entered into this 19 day of August, 2004, by and between the City of Muscatine, Iowa, party of the first part, hereinafter referred to as the "City" and Sulzberger Excavating, 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 \$89,000.20.

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 |

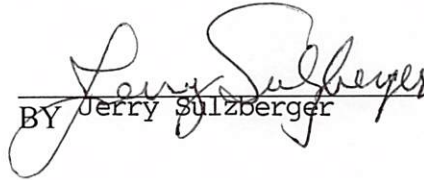
THIS AGREEMENT, together with other documents enumerated in this ARTICLE 3, with said other documents are as fully a part of the contract as if hereto attached or herein repeated, forms the contract between the parties hereto. In the event that any provision in any component part of this contract conflicts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

Sulzberger Excavating, Inc.
CONTRACTOR


By: Mayor Richard W. O'Brien


BY Jerry Sulzberger



President

TITLE

ATTEST: 
By: Acting City Clerk, Larry Wolf

ATTEST: 

TITLE

PERFORMANCE AND PAYMENT BOND

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

Merchants Bonding 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

Eighty nine thousand and 20/00

DOLLARS (~~\$89,000.20~~) 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 19 August, 2004, entered into a Contract with Owner for the

2004 FULLER PARK TRAIL

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 19 DAY OF August,

A.D. 2004.

IN THE PRESENCE OF:

Nancy L. Howell
WITNESS

Jerry Seiberger
PRINCIPAL

TITLE
Robert A. Snider
SURETY Attorney-in-fact



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

Robert Miller, Michael Harrison, Cheryl Harless, Jeffrey R. Miller

of Muscatine 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:

THREE MILLION (\$3,000,000.00) DOLLARS

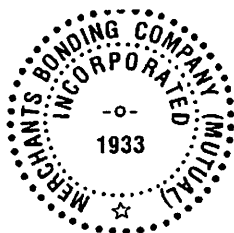
and to bind the MERCHANTS BONDING COMPANY (MUTUAL) thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the MERCHANTS BONDING COMPANY (MUTUAL), and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby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

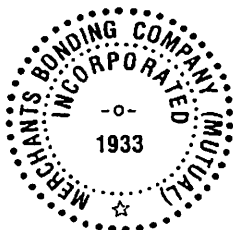


Marilyn Boyd
Notary Public, Polk County, Iowa

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 19 day of August, 2004



William Warner Jr.
Secretary

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID JN
SULZB-3

DATE (MM/DD/YYYY)
08/24/04

PRODUCER
Miller, Harrison, & Beckey
Insurance
100 W. Second St.
Muscatine IA 52761
Phone: 563-263-6044 Fax: 563-263-6667

INSURED

Sulzberger Excavating Company
Jerry Sulzberger
1500 South Houser Street
Muscatine IA 52761

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.

| INSURERS AFFORDING COVERAGE | NAIC # |
|-----------------------------------------|--------|
| INSURER A: Cincinnati 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 ADD'L LTR | INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|----------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------------------------|-----------------------------------|-----------------------------------------------------------------|---------------|
| A | | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR | CPP 067 52 73 | 03/31/04 | 03/31/05 | EACH OCCURRENCE | \$ 1,000,000 |
| A | | <input checked="" type="checkbox"/> Expl. Collapse & Underground GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | CPP 067 52 73 | 03/31/04 | 03/31/05 | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ 100,000 |
| | | | | | | MED EXP (Any one person) | \$ 5,000 |
| | | | | | | PERSONAL & ADV INJURY | \$ 1,000,000 |
| | | | | | | GENERAL AGGREGATE | \$ 1,000,000 |
| | | | | | | PRODUCTS - COMP/OP AGG | \$ 1,000,000 |
| A | | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | CPP 067 52 73 | 03/31/04 | 03/31/05 | COMBINED SINGLE LIMIT (Ea accident) | \$ 1,000,000 |
| | | | | | | BODILY INJURY (Per person) | \$ |
| | | | | | | BODILY INJURY (Per accident) | \$ |
| | | | | | | PROPERTY DAMAGE (Per accident) | \$ |
| | | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | \$ |
| | | | | | | OTHER THAN AUTO ONLY: EA ACC | \$ |
| | | | | | | AGG | \$ |
| A | | EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$ | CPA 067 52 73 | 03/31/04 | 03/31/05 | EACH OCCURRENCE | \$ 10,000,000 |
| | | | | | | AGGREGATE | \$ 10,000,000 |
| | | | | | | | \$ |
| | | | | | | | \$ |
| | | | | | | | \$ |
| A | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below | WC 1908540-06 | 03/31/04 | 03/31/05 | WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTH-ER | |
| | | | | | | E.L. EACH ACCIDENT | \$ 500,000 |
| | | | | | | E.L. DISEASE - EA EMPLOYEE | \$ 500,000 |
| | | | | | | E.L. DISEASE - POLICY LIMIT | \$ 500,000 |
| A | | OTHER Lease/Rented Equip | CPP 067 52 73 | 03/31/04 | 03/31/05 | | \$700,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: Fuller Park Trail

CERTIFICATE HOLDER

CITY001

City of Muscatine
City Hall
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 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Robert C. Miller

Robert C. Miller