



City of Muscatine



AGENDA ITEM SUMMARY

City Council

DATE:

March 10, 2021

STAFF

Pat Lynch, City Engineer

SUBJECT

Resolution Approving the Contract and Bond for the 2020/2021 Full-Depth Patching Project with All American Concrete, Inc. for the amount of \$443,925.00.

EXECUTIVE SUMMARY

The City of Muscatine Public Works Department has compiled a list of streets to be full-depth concrete patched during Fiscal Year 2020/2021. The bids were received on February 23, 2021 at 10:00 am and have been tabulated. All American Concrete, Inc. was the apparent low responsive, responsible bidder with a bid of \$443,925.00 and was awarded the Contract at the March 4th Council Meeting. A resolution approving the contract and bond is necessary to allow for the start of the project.

STAFF RECOMMENDATION

Staff recommends Council adopt a resolution to approve the contract and bond with All American Concrete, Inc. in the amount of \$443,925.00.

BACKGROUND/DISCUSSION

The City of Muscatine Roadway Maintenance Division has compiled a list of streets that qualify for full-depth patching based on a matrix previously developed. The bids were received on February 23, 2021 at 10:00 am and have been tabulated. This project was delayed due to uncertainty of road use tax revenue due to the Covid 19 pandemic. This contract is an indefinite delivery, indefinite quantity contract. Actual quantities will be modified as needed to fit within the budget set for it. The streets included in this project are:

- Ford Avenue: Frontage Road to Jody Drive
- Fulliam Avenue: Kindler Avenue to Devitt Avenue
- Logan Street: Fulliam Avenue to Cedar Street
- Sterling Woods Court: Cul-de-sac

CITY FINANCIAL IMPACT

The funds for this project come from the Roadway Maintenance Budget. This project was anticipated to cost approximately \$365,000. Actual quantities for this project will be modified to fit within this budget.

ATTACHMENTS

- Contract
- Bond

RESOLUTION 2021-0102

**APPROVING CONTRACT AND BOND
2020/2021 PCC FULL DEPTH PATCH CONSTRUCTION PROJECT**

WHEREAS, this Council has awarded the contract for the 2020/2021 PCC Full Depth Patch Construction Project to All American Concrete dated the 12th day of March, 2021, in the amount of \$443,925.00; 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 All American Concrete dated the 12th day of March, 2021, in the amount of \$443,925.00 is approved.
2. The performance bond accompanying such contract, wherein All American Concrete appears as principal and IMT 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 18th DAY OF MARCH, 2021.

Diana Broderson, Mayor

ATTEST:

Carol Webb, City Administrator

**CITY OF MUSCATINE
2020/2021 PCC FULL DEPTH PATCH
CONSTRUCTION PROJECT
FORM OF CONTRACT**

THIS AGREEMENT, made and entered into this 12 day of March, 2021, by and between the City of Muscatine, Iowa, party of the first part, hereinafter referred to as the "City" and All American 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 for the construction of the 2020/2021 PCC Full Depth Patch Construction Project, 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 ninetyfive (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 no 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.

Completion Dates: All work shall be completed in accordance with the special provisions contained herein.

The contract amount is \$443,925.00.

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

- | | |
|---------------------------|---------------------------------------|
| a. This Agreement | f. Signed Copy of Proposal |
| b. Addenda Numbers _____ | g. Special Provision |
| c. Contract Documents | h. Detailed Specifications Referenced |
| d. Notice to Bidders | i. Standard Specifications Referenced |
| 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 Diana Broderson

All American Concrete Inc.
CONTRACTOR

BY Jodi Simon

Vice President
TITLE

ATTEST: _____
By: Carol Webb, City Administrator

ATTEST: William J. Simon

President
TITLE

PERFORMANCE, PAYMENT, AND MAINTENANCE BOND

KNOW ALL BY THESE PRESENTS:

That we, All American Concrete, Inc. as Principal (hereinafter the "Contractor" or "Principal" and IMT Insurance Company, as Surety are held and firmly bound unto City of Muscatine, as Obligee (hereinafter referred to as "the Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of Four Hundred Forty-three Nine Hundred Twenty-Five Dollars and no/100 (\$425,925.00), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor entered into a contract with the Jurisdiction, bearing date the 12th day of March, 2021, hereinafter the "Contract") wherein said Contractor undertakes and agrees to construct the following described improvements:

2020/2021 PCC FULL DEPTH PATCH CONSTRUCTION PROJECT

and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents. Provided, however, that one year after the date of acceptance as complete of the work under the above referenced Contract, the maintenance portion of this Bond shall continue in force but the penal sum for maintenance shall be reduced to the sum of Four Hundred Forty-three Thousand Nine Hundred Twenty-five DOLLARS (\$443,925.00----), which is the cost associated with those items shown on the proposal and in the Contract that require a maintenance bond period in excess of one year.

It is expressly understood and agreed by the Contractor and Surety in this bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill, and abide by each and every covenant, condition, and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor's default of failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and the Surety on this Bond hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price the Jurisdiction is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Chapter 573 of the Iowa Code, which by this reference is made a part hereof as though fully set out herein.
3. **MAINTENANCE:** The Contractor and the Surety on this Bond hereby agree, at their own expense:
 - A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of 2 year (s) from the date of acceptance of

the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;

- B. To keep all work in continuous good repair; and
- C. To pay the Jurisdiction's reasonable costs of monitoring and inspection to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

4. **GENERAL:** Every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:

- A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
- B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than 20% of the total contract price, and that this bond shall then be released as to such excess increase; and
- C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damage penalty is being charged against the Contractor.
- D. That no provision of this Bond or of any other contract shall be valid that limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
- E. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Jurisdiction including interest, benefits, and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all costs and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

In the event the Jurisdiction incurs any "outlay and expense" in defending itself against any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction whole for all such outlay and expense, provided that the Surety's obligation under this bond shall not exceed 125% of the penal sum of this bond.

In the event that any actions or proceedings are initiated regarding this Bond, the parties agree that the venue thereof shall be Muscatine County, State of Iowa. If legal action is required by the Jurisdiction to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Jurisdiction, the Contractor and the Surety agree, jointly, and severally, to pay the Jurisdiction all outlay and expense incurred therefor by the Jurisdiction. All rights, powers, and remedies of the Jurisdiction hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers, and remedies given to the Jurisdiction, by law. The Jurisdiction may proceed against surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action(s) or not.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a work, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

Project No. _____
(CON'T – PERFORMANCE, PAYMENT, AND MAINTENANCE BOND)

PRINCIPAL:

All American Concrete Inc
Contractor

By Jodi Dimov
Signature

Vice President
Title

SURETY:

IMT Insurance Company
Surety Company

By Nancy D. Baltutat
Signature Attorney-in-Fact Officer

Nancy D. Baltutat
Printed Name of Attorney-in-Fact Officer

FORM APPROVED BY:

Attorney for Jurisdiction

LMC Insurance & Risk Management
Company Name

4200 University Avenue #200
Company Address

West Des Moines IA 50266
City, State, Zip Code

515-244-0166
Company Telephone Number

NOTE:

1. All signatures on this performance, payment, and maintenance bond must be original signatures in ink; copies, facsimile, or electronic signatures will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.



POWER OF ATTORNEY

Know All Persons By These Presents, that **IMT Insurance Company** a corporation duly organized under the laws of the State of Iowa, and having its principal office in the City of West Des Moines, County of Polk, State of Iowa, hath made, constituted and appointed, and does by these presents make, constitute and appoint

**Jeffrey R. Baker, Nancy D. Baltutat, Patrick K. Duff, Mark E. Keairnes,
Greg T. LaMair, Joseph I. Schmit, Christopher R. Seiberling, and Jill Shaffer**

of West Des Moines 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:

*****Unlimited Amounts*****

and to bind **IMT Insurance Company** thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of **IMT Insurance Company**, and all such 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 By-Laws adopted by the Board of Directors of **IMT Insurance Company** on December 18, 1998.

ARTICLE VIII, SECTION 4. - The President or any Vice President or Secretary shall have the authority to appoint Attorneys In Fact and to authorize them to execute on behalf of the Company, and attach thereto the Corporate Seal, bonds, undertakings, recognizances, contracts of indemnity or other obligatory writings, excluding insurance policies and endorsements.

ARTICLE VIII, SECTION 5. - The signature of any authorized officer and the Corporate Seal may be affixed by facsimile to any Power of Attorney authorizing the execution and delivery of any of the instruments described in Article VIII, Section 4 of the By-Laws. Such facsimile signature and seal shall have the same force and effect as though manually affixed.

In Witness Whereof, **IMT Insurance Company** has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this _____ day of _____, **2021**.

IMT Insurance Company

Sean Kennedy, President

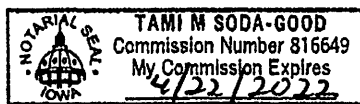


STATE OF IOWA
COUNTY OF Dallas

} ss:

On this _____ day of _____, **2021**, before me appeared Sean Kennedy, to me personally known, who being by me duly sworn did say that he is President of the **IMT Insurance Company**, 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 West Des Moines, Iowa, the day and year first above written.



Notary Public, Dallas County, Iowa

CERTIFICATE

I, Dalene Holland, Secretary of the **IMT Insurance Company** do hereby certify that the above and foregoing is a true and correct copy of the **POWER-OF-ATTORNEY**, executed by said the **IMT Insurance Company**, which is still in force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the Company on _____ day of _____, **2021**.

Dalene Holland, Secretary

