



Public Safety Building, 312 E. Fifth St.
Muscatine, IA 52761
(563) 263-9233
Fax (563) 263-5534

FIRE DEPARTMENT

MEMORANDUM

TO: Mayor and City Council Members
Gregg Mandsager, City Administrator

FROM: Jerry Ewers, Fire Chief

DATE: March 15, 2011

SUBJECT: Council Agenda / Approving Contract and Bond for Project

INTRODUCTION:

On September 15th, 2010 the City of Muscatine was awarded funding through a grant by the I-JOBS board for the relocating and construction of a new Southend fire station in the amount of \$ 850,250. Previously, the City of Muscatine was also awarded \$ 200,000 from the Iowa Department of Economic Development for a new fire station.

BACKGROUND:

The City Council authorized the preparation of plans and specifications for this project, advertised for bids and subsequently accepted the low bid of \$ 1,299,202.00 received from First Construction Group on March 3, 2011.

RECOMMENDATION/RATIONALE:

It is recommended that City Council approve the attached resolution approving the contract and bond for the construction of the new Southend Fire Station located at 2124 Stewart Road.

ATTACHMENTS:

1. Resolution
2. Contract
3. Performance and Payment Bond

RESOLUTION NO. _____

**APPROVING CONTRACT AND BOND FOR THE NEW SOUTHEND FIRE
STATION PROJECT**

WHEREAS, this Council has awarded the contract for the new Southend Fire Station project to First Construction Group, Inc., dated the 17th day of March 2011, in the amount of \$ 1,299,202.00; 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 First Construction Group, Inc. the 17th day of March 2011, in the amount of \$ 1,299,202.00 is approved.
2. The performance bond accompanying such contract, wherein First Construction Group, Inc. appears as principal and Trissel Graham and Tool 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 17th DAY OF MARCH, 2011.

CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA

Richard W. O'Brien, Mayor

ATTEST:

Gregg Mandsager, City Clerk



AIA® Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Fifteenth day of March in the year Two Thousand Eleven
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

City of Muscatine
215 Sycamore Street
Muscatine, IA 52761
Telephone Number: 563.264.1550

and the Contractor:

(Name, legal status, address and other information)

First Construction Group
3729 West Avenue
Burlington, IA 52601
Telephone Number: 319.752.4400

for the following Project:

(Name, location and detailed description)

Muscatine Fire Station No. 2
215 Sycamore Street
Muscatine, IA 52761
Construction of a new fire station facility and the associated site and utility improvements.

The Architect:

(Name, legal status, address and other information)

INVISION Architecture
303 Watson Powell Jr. Way
Suite 200
Des Moines, IA 50309
Telephone Number: 515-633-2941
Fax Number: 515-633-2942

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

(1231372595)

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1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
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7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

| The commencement date will be fixed in a notice to proceed.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than () days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

| The work is to be completed by December 10, 2011.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Two Hundred Ninety-nine Thousand Two Hundred Two Dollars and Zero Cents (\$ 1,299,202.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

NA

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
Excavation and Compacted Backfill	Cubic Yard	\$44

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
Tile Carpeting	\$30 per yard

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 22nd day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty Five (35) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

Init.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (5.00 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5.00 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

%

§ 8.3 The Owner's representative:
(Name, address and other information)

Richard O'Brien
215 Sycamore Street
Muscatine, IA 52761
Telephone Number: 563.264.1550

§ 8.4 The Contractor's representative:
(Name, address and other information)

Stephen Freese
First Construction Group
3729 West Avenue

Init.

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Exhibit A

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: Exhibit B

Number	Title	Date
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§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Addendum No. 1	February 21, 2011	273
Addendum No. 2	February 25, 2011	16
Addendum No. 3	March 1, 2011	2

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- 1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Contractor's Bid Form dated March 3, 2011
Certificate of Insurance
Performance and Payment Bond
Exhibit A Specification
Exhibit B Drawings

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Worker's Compensation:	Statutory Benefits
General Liability:	
Bodily Injury or Death	\$500,000 each occurrence, \$1,000,000 aggregate
Property Damage	\$100,000 each occurrence
Combined Single Limit	\$1,000,000 each occurrence
Umbrella Liability Coverage	\$1,000,000
Automobile Liability:	
Bodily Injury or Death	\$500,000 each occurrence
Property Damage	\$250,000 each occurrence
Option - Combined Single Limit	\$500,000 each occurrence
Builders Risk	Total cost of project
Maintenance Bond	2 years

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Richard O'Brien, Mayor

(Printed name and title)

CONTRACTOR (Signature)

Stephen Freese

(Printed name and title)

Init.

Additions and Deletions Report for

AIA® Document A101™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:01:15 on 03/15/2011.

PAGE 1

AGREEMENT made as of the Fifteenth day of March in the year Two Thousand Eleven

...

City of Muscatine
215 Sycamore Street
Muscatine, IA 52761
Telephone Number: 563.264.1550

...

First Construction Group
3729 West Avenue
Burlington, IA 52601
Telephone Number: 319.752.4400

...

Muscatine Fire Station No. 2
215 Sycamore Street
Muscatine, IA 52761
Construction of a new fire station facility and the associated site and utility improvements.

...

INVISION Architecture
303 Watson Powell Jr. Way
Suite 200
Des Moines, IA 50309
Telephone Number: 515-633-2941
Fax Number: 515-633-2942

PAGE 2

The commencement date will be fixed in a notice to proceed.

...

The work is to be completed by December 10, 2011.

PAGE 3

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Two Hundred Ninety-nine Thousand Two Hundred Two Dollars and Zero Cents (\$ 1,299,202.00), subject to additions and deductions as provided in the Contract Documents.

...

NA

...

<u>Excavation and Compacted Backfill</u>	<u>Cubic Yard</u>	<u>\$44</u>
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...

<u>Tile Carpeting</u>	<u>\$30 per yard</u>
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...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 22nd day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty Five (35) days after the Architect receives the Application for Payment.

PAGE 4

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (5.00 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5.00 %);

PAGE 5

☒ [X] Litigation in a court of competent jurisdiction

...

Richard O'Brien
215 Sycamore Street
Muscatine, IA 52761
Telephone Number: 563.264.1550

...

Stephen Freese
First Construction Group
3729 West Avenue
Burlington, IA 52601

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Title of Specifications exhibit: Exhibit A

...

Title of Drawings exhibit: Exhibit B

...

<u>Addendum No. 1</u>	<u>February 21, 2011</u>	<u>273</u>
<u>Addendum No. 2</u>	<u>February 25, 2011</u>	<u>16</u>
<u>Addendum No. 3</u>	<u>March 1, 2011</u>	<u>2</u>

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Contractor's Bid Form dated March 3, 2011
Certificate of Insurance
Performance and Payment Bond
Exhibit A Specification
Exhibit B Drawings

...

<u>Worker's Compensation:</u>	<u>Statutory Benefits</u>
<u>General Liability:</u>	
<u>Bodily Injury or Death</u>	<u>\$500,000 each occurrence, \$1,000,000 aggregate</u>
<u>Property Damage</u>	<u>\$100,000 each occurrence</u>
<u>Combined Single Limit</u>	<u>\$1,000,000 each occurrence</u>
<u>Umbrella Liability Coverage</u>	<u>\$1,000,000</u>
<u>Automobile Liability:</u>	
<u>Bodily Injury or Death</u>	<u>\$500,000 each occurrence</u>
<u>Property Damage</u>	<u>\$250,000 each occurrence</u>
<u>Option – Combined Single Limit</u>	<u>\$500,000 each occurrence</u>
<u>Builders Risk</u>	<u>Total cost of project</u>
<u>Maintenance Bond</u>	<u>2 years</u>

...

Richard O'Brien, Mayor

Stephen Freese

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Mark Nevenhoven, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:01:15 on 03/15/2011 under Order No. 3196525514_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. **773662P**

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

First Construction Group, Inc.
3729 West Avenue
Burlington, IA 52601

SURETY (Name and Principal Place of Business):

Developers Surety and Indemnity Company
1603 22nd Street, Ste 200
West Des Moines, IA 50266

OWNER (Name and Address):

City of Muscatine
215 Sycamore Street
Muscatine, IA 52761

CONSTRUCTION CONTRACT

Date: **March 15, 2011**

Amount: **\$1,299,202.00**

Description (Name and Location): **Construction of a new fire station facility & associated site & utility improvements**
215 Sycamore Street, Muscatine, IA 52761

BOND

Date (Not earlier than Construction Contract Date): **March 15, 2011**

Amount: **\$1,299,202.00**

Modifications to this Bond:

☒ None

☐ See Page 3

CONTRACTOR AS PRINCIPAL

COMPANY: (Corporate Seal)
First Construction Group, Inc.

SURETY COMPANY:

(Corporate Seal)
Developers Surety and Indemnity Company

Signature: _____
Name and Title:

Signature: *Daniel P. Curran*
Name and Title: **Daniel P. Curran**
Attorney-in-Fact

(Any additional signatures appear on page 3)

FOR INFORMATION ONLY-Name, Address and Telephone

AGENT OR BROKER:

Trissel Graham & Toole, Inc.
220 Emerson Place, Ste 200
Davenport, IA 52801
(563) 322-3521

OWNER'S REPRESENTATIVE (Architect,

Engineer or other party):

Invision Architecture
303 Watson Powell Jr. Way, Ste 200
Des Moines, IA 50309
(515) 633-2941

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
 - 4.4 Waive its rights to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available

to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. **773662P**

AIA Document A312

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

First Construction Group, Inc.
3729 West Avenue
Burlington, IA 52601

SURETY (Name and Principal Place of Business):

Developers Surety and Indemnity Company
1603 22nd Street, Ste 200
West Des Moines, IA 50266

OWNER (Name and Address):

City of Muscatine
215 Sycamore Street
Muscatine, IA 52761

CONSTRUCTION CONTRACT

Date: **March 15, 2011**

Amount: **\$1,299,202.00**

Description (Name and Location): **Construction of a new fire station facility & associated site & utility improvements**
215 Sycamore Street, Muscatine, IA 52761

BOND

Date (Not earlier than Construction Contract Date): **March 15, 2011**

Amount: **\$1,299,202.00**

Modifications to this Bond: ☐ None

☒ See Page 6

CONTRACTOR AS PRINCIPAL

COMPANY: (Corporate Seal)
First Construction Group, Inc.

SURETY COMPANY:

(Corporate Seal)
Developers Surety and Indemnity Company

Signature: _____
Name and Title: _____

Signature: *Daniel P. Curran*
Name and Title: **Daniel P. Curran**
Attorney-in-Fact

(Any additional signatures appear on page 6)

FOR INFORMATION ONLY-Name, Address and Telephone

AGENT OR BROKER:

Trissel Graham & Toole, Inc.
220 Emerson Place, Ste 200
Davenport, IA 52801
(563) 322-3521

OWNER'S REPRESENTATIVE (Architect,
Engineer or other party):

Invison Architecture
303 Watson Powell Jr. Way, Ste 200
Des Moines, IA 50309
(515) 633-2941

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly, or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be

null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Paragraph 6 is deleted in its entirety and the following is substituted in its place:

6. Once the Claimant satisfies the conditions of Section 4 and provides the Surety with all supporting documentation and any proof of claim requested, the Surety, within a reasonable period of time, shall notify the Claimant of the amounts it does not dispute and the bases for any amounts it does dispute. These bases may include, but are not limited to, inadequate documentation supporting the amount of or entitlement to the claim. The Surety within a reasonable period of time, shall pay or arrange to pay any undisputed amount. The failure of the Surety to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to part or all of a claim shall not in any way be deemed 1) an admission of liability by the Surety; 2) a waiver of any of the Surety's or Contractor's defenses; or 3) a waiver of any other right or basis the Surety or Contractor may have to dispute some or all of the claim. The Claimant shall have the immediate right, without further notice, to bring suit against the Surety to enforce any remedy available under this Bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY Company:

(Corporate Seal)

Signature: _____ Signature: _____

Name and Title: _____ Name and Title: _____

Address: _____ Address: _____

POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

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

Daniel P. Curran, Mark J. Schwab, Robert D.S. Karl, Deanna L. Schwab, Thomas R. Schwab, 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 each of said corporation could do, but reserving to each of said 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 January 1st, 2008.

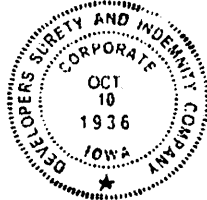
RESOLVED, that a combination of any two of the Chairman of the Board, the President, any Executive Vice-President, Senior Vice-President or Vice-President of the corporation be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power 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 officers and attested by its Secretary or Assistant Secretary this January 1st, 2008.

By: Daniel Young
Daniel Young, Vice-President

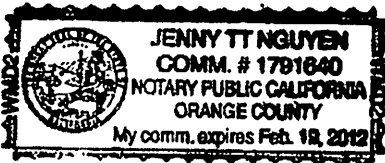
By: Stephen T. Pate
Stephen T. Pate, Senior Vice-President



State of California
County of Orange

On August 13th, 2008 before me, Jenny TT Nguyen, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Daniel Young and Stephen T. Pate
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jenny TT Nguyen
Jenny TT Nguyen, Notary Public

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary 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 Board of Directors of said corporation set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 15th day of March, 2011.

By: Gregg N. Okura
Gregg Okura, Assistant Secretary

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/16/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Trissel Graham & Toole, Inc. 220 Emerson Place Davenport, IA 52801 Daniel Curran	CONTACT NAME: Walter Zimmerer, CIC PHONE (A/C, No, Ext): (563)322-3521 FAX (A/C, No): (563)322-1046 E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:														
INSURED First Construction Group, Inc. 3729 West Avenue Burlington, IA 52601	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Employers Mutual Casualty Co.</td> <td></td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Employers Mutual Casualty Co.		INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER B :															
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES **CERTIFICATE NUMBER:** General Certificates **REVISION NUMBER:**

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			4X46591	12/31/2010	12/31/2011	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY			4X46591	12/31/2010	12/31/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						\$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			4X46591	12/31/2010	12/31/2011	EACH OCCURRENCE \$ 8,000,000
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 8,000,000
	DEDUCTIBLE						\$
	<input checked="" type="checkbox"/> RETENTION \$ 10,000						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			4X46591	12/31/2010	12/31/2011	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		N/A				E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Muscatine and Invision Architecture are included as additional insureds on the general liability policy above if required by written contract and subject to policy forms, terms and conditions.

Re: Muscatine Fire Station 2

CERTIFICATE HOLDER

CANCELLATION

City of Muscatine 215 Sycamore St Muscatine, IA 52761	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p> <p style="text-align: center;"><i>Daniel Curran</i></p> <p>Daniel Curran/WZ</p>
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