

CRAWFORD

Engineering & Surveying, Inc.

118 Third Avenue NE
Post Office Box 793
Independence, Iowa 50644
(319) 334-7077
(319) 334-7078 Fax

July 2, 2024

Matthew Schmitz, City Manager
City of Independence
331 First Street East
Independence, Iowa 50644

Re: Independence 8th Avenue NW – IPF Area Stormwater Improvements
Independence, Iowa

Dear Mr. Schmitz:

Enclosed please find an electronic copy of the Contract and the Performance, Payment, and Maintenance Bond, properly executed by Eastern Iowa Excavating & Concrete, LLC for the referenced project.

The contractor is mailing the original contract and bond forms and we will deliver to City Hall when we receive them.

If you have any questions or comments, please contact me.

Sincerely,

CRAWFORD ENGINEERING & SURVEYING, INC.



Lawrence G. Crawford, PE & LS

LGC/dw

Enclosure

SURETY BOND NO. 2578128

PERFORMANCE, PAYMENT, AND MAINTENANCE BOND

KNOW ALL BY THESE PRESENTS:

That we, Eastern Iowa Excavating & Concrete LLC, as Principal (hereinafter the "Contractor" or "Principal" and West Bend Insurance Company, as Surety are held and firmly bound unto City of Independence, Iowa, 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 nine thousand three hundred seventy-six dollars and eighty-five cents dollars (\$ 409,376.85) 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 _____ day of _____, 2024, hereinafter the "Contract") wherein said Contractor undertakes and agrees to construct the following described improvements:

**Independence 8th Avenue NW – IPF Area Stormwater Improvements
Independence, Iowa**

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 nine thousand three hundred seventy-six dollars and eighty-five cents dollars (\$ 409,376.85), 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 four (4) 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.
- E. Maintenance bond requirements shall not apply to the following: work that is not permanently incorporated into the project, pavement markings, seeding, sodding, and plant material and planting.

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 Buchanan 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 therefore 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.

Witness our hands, in triplicate, this _____ day of _____, 2024.

Surety Countersigned By:

Signature of Agent

Printed Name of Agent

Company Name

Company Address

City, State, Zip Code

Company Telephone Number

FORM APPROVED BY:

Attorney for Jurisdiction

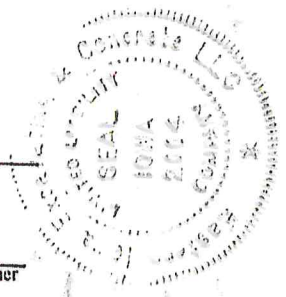
PRINCIPAL:

Eastern Iowa Excavating & Concrete LLC
Contractor

By: 
Signature Owner

Chad Demmer

Title



SURETY:

West Bend Insurance Company
Surety Company

By: 
Signature Attorney-in-Fact Officer

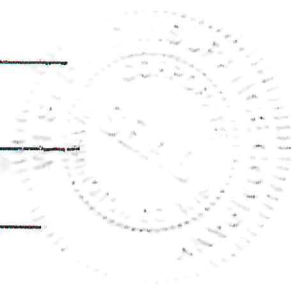
Kim Hess
Printed Name of Attorney-in-Fact Officer

Tricor
Company Name

600 Star Brewery Dr Ste 110
Company Address

Dubuque, IA 52001
City, State, Zip Code

563-556-5441
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.



Bond No. 2578128

POWER OF ATTORNEY

Know all men by these Presents, that West Bend Insurance Company (formerly known as West Bend Mutual Insurance Company prior to 1/1/2024), a corporation having its principal office in the City of West Bend, Wisconsin does make, constitute and appoint:

Kim Hess

lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf as surety and as its act and deed any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of: Thirty Million Dollars (\$30,000,000)

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of West Bend Insurance Company by unanimous consent resolution effective the 1st day of January 2024.

Appointment of Attorney-In-Fact. The president or any vice president, or any other officer of West Bend Insurance Company may appoint by written certificate Attorneys-In-Fact to act on behalf of the company in the execution of and attesting of bonds and undertakings and other written obligatory instruments of like nature. The signature of any officer authorized hereby and the corporate seal may be affixed by facsimile to any such power of attorney or to any certificate relating therefore and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the company in the future with respect to any bond or undertaking or other writing obligatory in nature to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any said officer at any time.

Any reference to West Bend Mutual Insurance Company in any Bond and all continuations thereof shall be considered a reference to West Bend Insurance Company.

In witness whereof, West Bend Insurance Company has caused these presents to be signed by its president undersigned and its corporate seal to be hereto duly attested by its secretary this 1st day of January 2024.

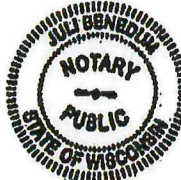
Attest Christopher C. Zwygart
Christopher C. Zwygart
Secretary



Robert J. Jacques
Robert J. Jacques
President

State of Wisconsin
County of Washington

On the 1st day of January 2024, before me personally came Robert Jacques, to me known being by duly sworn, did depose and say that he is the President of West Bend Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.



Jul Benedict
Lead Corporate Attorney
Notary Public, Washington Co., WI
My Commission is Permanent

The undersigned, duly elected to the office stated below, now the incumbent in West Bend Insurance Company, a Wisconsin corporation authorized to make this certificate, Do Hereby Certify that the foregoing attached Power of Attorney remains in full force effect and has not been revoked and that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at West Bend, Wisconsin this _____ day of _____



Christopher C. Zwygart
Christopher C. Zwygart
Secretary

CONTRACT NO. _____

DATE _____

CONTRACT

THIS CONTRACT, made and entered into at City Hall this _____ day of _____, 2024, by and between the City of Independence, Iowa by its City Council upon order of its City Council hereinafter called the "Jurisdiction," and Eastern Iowa Excavating & Concrete, LLC, hereinafter called the "Contractor".

WITNESSETH:

The Contractor hereby agrees to complete the work comprising the below referenced improvement as specified in the contract documents, which are officially on file with the Jurisdiction, in the office of the City Clerk. This contract includes all contract documents. The work under this contract shall be constructed in accordance with the SUDAS Standard Specifications, Latest Edition, and as further modified by the supplemental specifications and special provisions included in said contract documents, and the Contract Attachment - Item 1: General, which is attached hereto. The Contractor further agrees to complete the work in strict accordance with said contract documents, and to guarantee the work as required by law, for the time required in said contract documents, after its acceptance by the Jurisdiction.

This contract is awarded and executed for completion of the work specified in the contract documents for the bid prices shown on the Contract Attachment - Item 2: Bid Items, Quantities, and Prices, which were proposed by the Contractor in its proposal submitted in accordance with the Notice to Bidders and Notice of Public Hearing for the following described improvements:

**Independence 8th Avenue NW – IPF Area Stormwater Improvements
Independence, Iowa**

The Contractor agrees to perform said work for and in consideration of the Jurisdiction's payment of the bid amount of Four Hundred Nine Thousand Three Hundred Seventy Six and 85/100 dollars (\$409,376.85) which amount shall constitute the required amount of the performance, maintenance, and payment bond. The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written notice to proceed by the Jurisdiction and to fully complete the project by November 1, 2024 and to pay liquidated damages for noncompliance with said completion provisions at the rate of \$500.00 for each calendar day thereafter that the work remains incomplete.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument, in triplicate on the date first shown written.

JURISDICTION

CONTRACTOR

By City of Independence, Iowa

Eastern Iowa Excavating & Concrete LLC

Contractor

By


Signature

Matthew Schmitz, City Manager

Owner

Title

121 Nixon Street SE

Street Address

Cascade, Iowa 52033

City, State, Zip Code

563-852-5120

Telephone

CONTRACTOR PUBLIC REGISTRATION INFORMATION To Be Provided By:

1. All Contractors: The Contractor shall enter its Public Registration Number C 0900-23 issued by the Iowa Commissioner of Labor pursuant to Section 91C.5 of the Iowa Code.
2. Out-of-State Contractors:
 - A. Pursuant to Section 91C.7 of the Iowa Code, an out-of-state contractor, before commencing a contract in excess of five thousand dollars in value in Iowa, shall file a bond with the division of labor services of the department of workforce development. It is the contractor's responsibility to comply with said Section 91C.7 before commencing this work.
 - B. Prior to entering into contract, the designated low bidder, if it is a corporation organized under the laws of a state other than Iowa, shall file with the Engineer a certificate from the Secretary of the State of Iowa showing that it has complied with all the provisions of Chapter 490 of the Iowa Code, or as amended, governing foreign corporations.

NOTE: All signatures on this contract must be original signatures in ink; copies, facsimile, or electronic signatures will not be accepted.

CORPORATE ACKNOWLEDGMENT

State of Iowa)
) SS
Dubuque County)

On this 2nd day of July, 2024, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Chad Demmer and _____, to me known, who, being by me duly sworn, did say that they are the Owner, and _____, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that Chad Demmer and _____ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



Lynne White
Notary Public in and for the State of Iowa
My commission expires 4-26, 2026

PARTNERSHIP ACKNOWLEDGMENT

State of _____)
) SS
_____ County)

On this ____ day of _____, 20 ____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ to me personally known, who being by me duly sworn, did say that the person is one of the partners of _____, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____, 20 ____

INDIVIDUAL ACKNOWLEDGMENT

State of _____)
) SS
_____ County)

On this ____ day of _____, 20 ____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ and _____, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

Notary Public in and for the State of _____
My commission expires _____, 20 ____

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

State of _____)
) SS
 _____ County)

On this _____ day of _____, 20____, before me a Notary Public in and for said county, personally appeared _____, to me personally known, who being by me duly sworn did say that person is _____ of said _____, that (the seal affixed to said instrument is the seal of said OR no seal has been procured by the said) _____, and that said instrument was signed and sealed on behalf of the said _____, by authority of its managers and the said _____ acknowledged the execution of said instrument to be the voluntary act and deed of said _____, by it voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____, 20____

CONTRACT ATTACHMENT: ITEM 1 - GENERAL

The Jurisdiction should provide detailed information here regarding any additional contract requirements.

CONTRACT ATTACHMENT: ITEM 2 - BID ITEMS AND QUANTITIES

This contract is awarded and executed for completion of the work specified in the contract documents for the bid prices tabulated below as proposed by the Contractor in its proposal submitted in accordance with notice to bidders and notice of public hearing. All quantities are subject to revision by the Jurisdiction. Quantity changes that amount to 20% or less of the amount bid shall not affect the unit bid price.

This space is provided for the Jurisdiction to list the bid items and cost information from the low bidders proposal.

(See Attached Proposal)

PROPOSAL - REVISED

PROPOSAL ATTACHMENT: PART C – BID ITEMS, QUANTITIES, AND PRICES

This is a UNIT BID PRICE CONTRACT. The bidder must provide the Bid Price(s), any Alternate Price(s), and the Total of the Base Bid plus any Add-Alternates in this Proposal Attachment: Part C – Bid Items, Quantities, and Prices the total of the base bid plus any alternates selected by the Jurisdiction shall be used only for comparison of bids. The total of the Base Bid plus any Add-Alternates shall be used for determining the sufficiency of the bid security.

<u>No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
1.	Mobilization	1 Each	Lump Sum	\$ <u>28,000.00</u>
2.	SWPPP Management	1 Each	Lump Sum	\$ <u>680.00</u>
3.	Remove & Reinstall Fence	1 Each	Lump Sum	\$ <u>28,500.00</u>
4.	Topsoil - Strip, Stockpile, Respread	505 CY	\$ <u>15.00</u>	\$ <u>7,575.00</u>
5.	Excavation, Class 10	3,405 CY	\$ <u>17.65</u>	\$ <u>60,098.25</u>
6.	Subdrain, 10" dia. HDPE AASHTO M252 Type CP w/Porous Backfill	420 LF	\$ <u>35.55</u>	\$ <u>14,931.00</u>
7.	Storm Sewer, Trenched, RCP, 12 in.	142 LF	\$ <u>47.55</u>	\$ <u>6,752.10</u>
8.	Storm Sewer, Trenched, RCP, 18 in.	316 LF	\$ <u>55.25</u>	\$ <u>17,459.00</u>
9.	Circular Concrete Apron, 18"	2 Each	\$ <u>2,585.00</u>	\$ <u>5,170.00</u>
10.	Intake, SW-511 Rectangular Area Intake	2 Each	\$ <u>3,050.00</u>	\$ <u>6,100.00</u>
11.	Intake, Modified SW-501 Outlet Structure	2 Each	\$ <u>5,000.00</u>	\$ <u>10,000.00</u>
12.	Intake, SW-512, D2 = 18" w/SW-604 Type 4A Grate	2 Each	\$ <u>1,650.00</u>	\$ <u>3,300.00</u>
13.	Storm Manhole, SW-401, 48"	2 Each	\$ <u>3,785.00</u>	\$ <u>7,570.00</u>
14.	Erosion Stone	12 Tons	\$ <u>41.00</u>	\$ <u>492.00</u>
15.	Modified Subbase, 4" Thick	4,835 SY	\$ <u>5.15</u>	\$ <u>24,900.25</u>
16.	Subgrade Preparation	4,835 SY	\$ <u>0.55</u>	\$ <u>2,659.25</u>
17.	Portland Cement Concrete Pavement, 6.5" Thick	4,680 SY	\$ <u>35.25</u>	\$ <u>164,970.00</u>
18.	Pavement Removal	947 SY	\$ <u>10.00</u>	\$ <u>9,470.00</u>
19.	Silt Fence for Erosion Control	500 LF	\$ <u>4.50</u>	\$ <u>2,250.00</u>
20.	Seed, Fertilize, Mulch	1 Acre	\$ <u>8,500.00</u>	\$ <u>8,500.00</u>

TOTAL AMOUNT OF BID

\$ 409,376.85

REVISED – PROPOSAL - 6