

CONTRACT

THIS AGREEMENT, made and entered into this ____ day of _____ A.D., 20____ between the City of Fargo (a Municipal Corporation, under the laws of North Dakota) by the Board of Commissioners of said City, hereinafter called the City, and _____ Hereinafter called the Contractor.

WITNESSETH: That the said Contractor, having been awarded the contract to construct _____ in accordance with the proposal Therefor, which is bound herewith, and for and in consideration of the premises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the City, hereby covenants and agrees to and with said City to undertake and execute all of the said named work in a good, substantial and workmanlike manner, and to furnish all the materials and tools and labor necessary to properly perform and complete the work ready for use, in strict accordance with attached specifications and the plans and profiles mentioned therein, and under penalty expressed in the attached bond, bearing even date herewith, which are hereby declared and accepted as essential parts of the unit price named in the proposal attached hereto and made a part hereof.

What the Contract Price Includes:

The price named in the proposal attached here is for the completed work, and include the furnishing of all the materials, and all labor, tools and appliances, and all expenses, direct and indirect, connected with the proper execution of the work in accordance with the plans, profiles and specifications for the work, and maintaining the same until it is accepted by the Board of Commissioners.

Extra Work:

When directed in writing by the City Engineer to do so, the Contractor shall furnish material and do extra work not otherwise provided for by the terms of this contract, but which may be connected with, or necessary to the proper completion of the work. Such material and work shall be furnished and done as part of this contract and subject to its provisions and at such prices as may be agreed upon by the City Engineer and the Contractor. In the event of a disagreement, the price shall be determined by the reasonably direct cost of material and labor furnished by the Contractor, to which shall be added twenty-five (25%) percent to cover general expenses and superintendence, profits, contingencies, use of tools, plant and Contractors risk and liability.

Bills for Extra Work:

On or before the tenth day succeeding the completion of the extra work authorized by "Contractors Order," the Contractor shall present to the City Engineer the original "Contractor's Order," together with a full and complete itemized statement of such extra work, with date of the completion of the work mentioned therein, and upon certification by the City Engineer or an authorized representative as to the correctness of such items with regard to the amount and character of labor performed and materials furnished under such "Contractor's Order," the City Engineer shall enter the same as part of the estimate of the amount due the Contractor, and they shall not be entitled to pay for any extra work in which they fail to present the "Contractor's Order" within the time and in the manner hereinbefore mentioned.

Inspection:

All materials furnished by the Contractor shall be subject to the inspection and approval of the City Engineer at all times during the progress of the work, and until the final completion

of the same, and shall be delivered by the Contractor a sufficient length of time in advance of the work to enable the City to make the proper tests and inspection; and as soon as the materials are tested and inspected, the Contractor shall immediately remove all rejected materials from the work and to such a point distant therefrom as the City Engineer may require. No materials shall be used before being inspected and approved by the City Engineer, but the failure or neglect on the part of said City Engineer to condemn or reject inferior materials or work shall not be construed to imply an acceptance of the same should their inferiority become evident at any time.

The Contractor shall furnish at their own expense such labor as may be required to enable a thorough inspection and culling of all materials.

Obstruction, Guard and Contractor's Liability:

The Contractor shall erect and maintain good and sufficient guards, barricades and signals at all exposed places at or near the work, and shall in all cases maintain a safe passageway at all road crossings, crosswalks and street intersections, and shall do all other things necessary to prevent accidents or loss of any kind, and shall save the City harmless forever from any and all damages, costs, and expenses resulting from the neglect or failure of the Contractor in the performance of this contract, to properly protect the public and employees from injury to person or property.

Property Liable to Damages:

The Contractor shall be liable for all damage done to water, gas, steam or other pipes, flumes, poles or conduits or other property owned by any person or corporation. The Contractor shall repair or replace, as directed by and to the satisfaction of the Board of Commissioners and the Engineer, all water, sewer irrigation, drainage or other pipes, flumes, conduits, hydrants, poles, pavements, sidewalks or other property which may be injured or damaged by reason of the execution of the work under the contract, or by reason of the negligence or carelessness of the Contractor or any of their agents, servants or employees, and if the Contractor shall fail or neglect to make sure repairs or to replace the same within ten (10) days after being notified by the City to do so, then the City by its agents, servants or employees may make such repairs to or replace such sewer pipe, irrigation, drainage, flumes, conduits, poles or other property so injured or damaged, and the cost of so doing may be deducted from any sum or sums due or to become due the said Contractor under this contract.

The Contractor will be responsible for all survey irons and monuments, and if disturbed they will be replaced by a Registered Land Surveyor of the State of North Dakota, at the Contractor's own expense.

Contractors for this project are responsible for damage to any underground or overhead piping, wiring, or other utility property occurring during any excavation or construction by said Contractor. The Contractor, before commencing any excavation or construction, shall find out the location and seek aid in locating the previously mentioned underground property by contacting the following:

ND One Call 1 800-795-0555

Property to Remain City's Property:

All castings, gates, pipe, dirt, and materials removed in the execution of this contract shall remain the property of the City of Fargo and must be delivered to the City Engineer at such points as he/she may direct.

Time of Commencement & Completion:

The Contractor shall commence the work within thirty (30) days after being instructed to do so in a written notice from the City, continuing the work without interruption and shall fully complete the entire contract on or before _____, or _____ working days, and the Contractor agrees that if they shall fail to complete the work under this contract in conformity with the plans and specifications within the time specified, or any extension of such time, and the contract be not declared terminated and abandoned, the City shall deduct and retain out of the money which may be due or become due said Contractor under this agreement the following amounts. The sum given in the following schedule, which said sum per day is agreed upon, fixed and determined by the parties hereto to be liquidated damages, not a penalty.

LIQUIDATED DAMAGES SCHEDULE			
ORIGINAL CONTRACT AMOUNT		SUBSTANTIAL COMPLETION Calendar Day	FINAL COMPLETION 30%
From	To		
\$0	\$50,000	\$150	\$45
50,000	100,000	250	75
100,000	500,000	400	120
500,000	1,000,000	500	150
1,000,000	2,000,000	600	180
2,000,000	---	900	270

Substantial completion shall consist of the following items unless otherwise noted in the Special Instructions to Bidders:

- 1. On underground utility projects: Substantial completion shall consist of the installation of all main line sewer, water, storm sewer pipe. Installation shall include testing of water main and installation of sewer and water services. All underground utilities shall be functional.**

2. On paving projects: Substantial completion requires that the curb & gutter and paving section be installed and functional. In built-up areas, substantial completion includes the installation of all driveways and sidewalks.

3. On street light, drainage and other miscellaneous projects: Substantial completion shall mean that the specified improvement is operational and/or functional.

Final completion shall consist of the repair of all punch list and clean up items.

At any time before expiration of the original or extended contract time, a written request may be made to the engineer for additional time to complete the contract. The request shall be supported by adequate documentation stating the reasons and basis for the request. The engineer's determination will consider to what extent the delays were caused by conditions beyond the contractor's control that may be offset by time lost due to the failure to diligently prosecute the work or to other conditions within the contractor's control. A plea that insufficient time was specified is not a valid reason for a time extension. A time extension will not be considered for inclement weather or for the time period from November 15 to April 15.

Failure to complete work on time in case there should not be sufficient money due or to become due said Contractor under this contract, then they will pay to the City said sum per day, which said sum is, in view of the difficulty of estimating damages, hereby agreed upon, fixed and determined by the parties hereto as liquidated compensatory damages that the City will suffer by reason of the failure of the Contractor to complete the work within the time agreed upon, and such daily compensation shall apply to said work after the time herein agreed upon for its completion or any extension thereof.

Claim for Damages:

The Contractor shall not be entitled to any claims for damages on account of hindrance or delay from any cause whatever, but if occasioned by any act or omission over which the Contractor has not control, or on the part of the City, such hindrance or delay may entitle the Contractor to an extension of time in which to complete the work which shall be determined by the Board of Commissioners; provided that the Contractor shall give notice in writing to the Board of Commissioners of the cause of such delay within ten (10) days after the happening of the same.

Subletting:

The Contractor shall not assign or sublet the whole or any portion of the work contemplated in this contract (except only for the supply of materials, equipment and tools) without having first obtained the written consent of the Board of Commissioners to do so; and in case such consent be given, it shall in no way release the Contractor from responsibility, but they shall be held in all respects accountable the same as if no consent had been given. The Contractor will be required to give their personal attention to the work.

Specifications, Plans and Stakes:

The work shall be done in strict conformity to the plans, profiles and specifications and to the exact lines and grades as fixed by the Engineer.

Cleaning Up:

Immediately upon the completion of the work on each block, the Contractor shall at their own cost and expense, clean up and remove all refuse materials of every kind resulting from the work, and upon failure to do so within twenty-four (24) hours after having been

notified by the City Engineer, the work may be done by the City and the cost thereof charged to the Contractor or deducted from the amount due the Contractor on their estimate.

Orders:

Whenever the Contractor is not present on any part of the work where it may be necessary to give instructions, orders may be given by the City Engineer or their assistants to the superintendent or foreman who may have charge of the particular work in question, and such orders shall be obeyed.

Defective Work:

The Contractor, upon being so directed by the City Engineer or their assistants, shall suspend, remove or reconstruct or make good without charge any work which they may consider to be defectively executed.

Competent Workers to be Employed:

The Contractor shall employ suitable mechanics for every kind of mechanical work. If any person employed by the Contractor appears incompetent, disorderly, or disobedient to the City Engineer or their assistants, they shall be discharged immediately upon request of the City Engineer and shall not again be employed upon the work without the consent of the City Engineer.

Order of Executing Work:

The Contractor shall commence work at such point or points as the City Engineer may direct, and shall conform to their directions as to the order and time in which different parts of the work shall be done.

When a Contractor has more than one contract with the City at the same time, they shall have sufficient workers, machinery, tools and material upon the work to complete each contract in the manner and within the time specified in each separate contract, and they shall not be entitled to remove workers, machinery, tools or materials from one contract job to another without the written consent of the City Engineer, or shall be permitted to commence work on a new contract job while in default upon an existing contract without the written permission of the City Engineer.

Failure to Pay for Labor and Materials:

If at any time it shall appear that the Contractor has failed to pay the laborers employed upon the work, or has failed to pay for the materials used therein, the City may withhold from the money which may be due or become due to the Contractor under this agreement, such amount or amounts as may be necessary for the payment of such labor and material, and may apply the same in such payment, and deduct the same from the final or other payment due the Contractor. This provision is intended to protect the laborers employed upon the work, and the parties who may furnish material to be used therein, and the City may or may not exercise its option as it may deem best.

Laws and Ordinances to be Observed:

In all operations in connection with the work embraced in the contract, the Contractor will be held responsible for any failure to respect, adhere to and comply with all local ordinances and laws controlling or limiting in any way the actions of those engaged upon the work, or affecting the materials or the transportation or disposition of them; and the Contractor hereby assumes all liability for and agrees to indemnify the City against all loss, cost of damage for or by reason of any claim for damages to the property of the City of any person, caused by the negligence of the Contractor or their servants or employees in carrying out or attempting to carry out this contract, and from claims made by laborers or others for injury sustained by reason of the negligence of the Contractor, their servants

or employees, in the performance or attempted performance of this contract, and from damages sustained by depositing materials to public injury or to the injury of any person or corporation, or resulting from the use of any patented material, implement or process which may be employed in executing the work under this contract, including costs and expense of defense; PROVIDED that they shall be notified of the bringing of suit in such cases, and be permitted to defend the same, and it shall be lawful to withhold final payment of this contract so long as it shall seem necessary for the indemnity of the City.

Failure to Prosecute Work Vigorously:

If the Contractor shall fail to commence work under this contract within thirty (30) days after being instructed to do so in a written notice from the City, or if after commencing such work the Contractor shall fail to prosecute the same diligently and continuously until the completion of this contract (unless permitted to suspend said work by a written permit of the Board of Commissioners) or if at any time during the existence of this contract it shall appear to the engineer that the force employed, appliances provided, or the character or progress of the work or material furnished are not such as will insure the completion of the work or this contract in the time specified, or are not in accordance with the plans, profiles and specifications for such work, or the work is improperly done or constructed, after giving the Contractor and their surety five (5) days notice in writing to commence or proceed with said work or supply the increased force, appliances or tools, or to make such improvements in the character of the work or materials as is requisite to make the same conform to the stipulations of this contract, and upon the failure of the Contractor to comply with either of said notices, the Board of Commissioners reserves the right to suspend the work thereon at any time or to relet the contract therefor or order a reconstruction of said work or any part thereof improperly done and to declare the contract forfeited, and the Contractor and sureties liable on their bond for the full amount of the contract price.

The notice provided for in this section may be served upon the Contractor by delivering the same to any person in charge of the work, or by leaving the same at the office of the Contractor in Fargo; and upon the surety of the Contractor by leaving the same at the office of such surety in Fargo.

Neither the abandonment of this contract by the Contractor, as herein provided, nor the declaration by the City that the same is forfeited, nor the doing of the said work by the bidder, shall release the surety of the Contractor from liability under this contract.

Payments:

The City may make payments to the Contractor for ninety-five (95%) percent of the value of the work actually completed according to the terms of this contract. The retainage shall be reserved until the final completion of the entire work provided for in the contract, but in no case will the City Engineer give an estimate to a Contractor who is in default under the terms of the contract unless expressly authorized by the Board of City Commissioners.

The Contractor shall be paid by the City according to the certified statement furnished by the City Engineer and approved by the Board of Commissioners, and the payment shall be made in warrants drawn on the fund of said City, with interest at seven (7%) percent per annum or in cash as stated below. The City assumes and incurs no general liability under this contract for any sum to be raised by general taxation and reserves the right, at its option, to sell such warrants for cash, and from the proceeds thereof pay the Contractor the amount due them under this contract.

The retained amounts will be according to the following table:

Percentage of Completion

0 - 90%
91 - 100%

Percent Retained

5%
1 - 5% *

*Reduction of retainage is at the discretion of the engineer based on the progress of the contract.

Guarantee:

It is expressly agreed by the Contractor that if in carrying out this contract the workmanship materials and manner of construction provided in and contemplated by this contract, and the plans, profiles and specifications accompanying and forming a part of the same are followed and carried out, the improvements contemplated herein will remain in good condition for the period of one (1) year from the date of its completion, ordinary wear excepted; and that if said improvement does not remain in said condition for such length of time it will be because of defects in workmanship, materials, or manner of construction, and the Contractor hereby expressly agrees and guarantees that such improvement and every part thereof will remain in such condition for the period of one (1) year after its completion and that any repairs necessary to maintain said improvement and every part thereof in good condition during said time, ordinary wear excepted, will be made by the Contractor without additional charge or cost to the City of Fargo.

The determination of the necessity for repairs above mentioned rests entirely with the Board of Commissioners whose decision upon the matter shall be final and obligatory upon the Contractor.

If the termination of the said period of one (1) year after the completion and acceptance of the work done under this contract shall fall within the months of November, December, January, February, March or April, then in that case said months shall not be included in the computation of the said period of one (1) year, but said period shall be held and understood to terminate on the 15th day of May next thereafter, unless otherwise permitted by the Board of Commissioners and it is hereby expressly understood and agreed that the City shall not finally accept the work before the date specified by the Board of Commissioners, and that only in case the Contractor shall serve upon the Board of Commissioners in writing a notice that they desire the City to accept or reject the work within thirty (30) days after the service of such notice.

Miscellaneous:

The Contractor shall cease all work on Sunday except in case of emergency when the Board of Commissioners shall have power, on showing by the Contractor that an emergency exists, to waive this provision.

This contract with all its forms, plans, profiles, specifications and stipulations shall be binding upon the heirs, executors, administrators or assigns of the said Contractor, and upon the successors or assigns of the said City, as much as if each and all of them had been specifically mentioned.

IN WITNESS WHEREOF, the Board of Commissioners of the City of Fargo, by its Mayor, has made and executed this contract on behalf of said City, and has caused the seal of said City to be hereto affixed and the Contractor has hereunto set their hand and seal the day and year first above written.

CITY OF FARGO (a Municipal Corporation)

by _____ (SEAL)
Mayor

by _____ (SEAL)
Contractor

ATTEST: _____
City Auditor