

ORDINANCE NO. 1063

A BILL FOR AN ORDINANCE Authorizing the Mayor and Recorder of the City of Albany, Oregon, to enter into a contract with Hoover and McNeil for the construction of a complete City Hall building except the plumbing and heating, for the City of Albany, Linn County, Oregon, and declaring an emergency:

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

WHEREAS, In and by Resolution No. _____, 1923 of the City of Albany, Oregon plans and specifications were adopted for the construction of a City Hall by the City of Albany, and

WHEREAS, In and by said resolution the Recorder of the City of Albany was authorized and directed to give notice for proposals for the construction of said City Hall, and

WHEREAS, After due notice and advertisement for bids made and given, the Recorder of the City of Albany, according to law and said resolution, to-wit: on the 11th. day of April, 1923, at the hour of 8:00 o'clock P.M., presented to the council of the City of Albany certain bids for the construction of a City Hall building, proposed to be constructed by the City of Albany, and among which was the bid of Hoover and McNeil, which said bid was in due form and conformity with all conditions imposed by law and the Council, and by which said bid, the said Hoover & McNeil proposed to furnish all materials, implements and to perform all labor necessary and to furnish and do everything necessary for the complete construction of a brick building as the proposed City Hall of Albany, Oregon, and to furnish all materials and labor and everything else necessary for the construction of said building for the sum of \$19321.00 and

WHEREAS, The Council in regular session on the 11th. day of April, 1923, duly considered said bids, and

WHEREAS, The said Hoover & McNeil was the lowest responsible bidder for said improvement and said bid was the lowest and best bid therefor, and

WHEREAS, The Council by resolution duly adopted provided that said bid be accepted, and

WHEREAS, The Council in regular session on April 11th. 1923, let the contract for the construction of said City Hall building, and

WHEREAS, Said City Hall building is to be constructed and all the work in connection therewith in accordance with the charter and ordinances of the City of Albany, and the plans and specifications, as modified, of the architect, Chas. H. Burggraf now on file in the office of the City Recorder of the City of Albany.

Section 1. Now, therefore, the Mayor and Recorder of the City of Albany are hereby authorized and directed to enter into a contract in

527

ORDINANCE NO. 1063

writing with the said Hoover & McNeil for the construction of a City Hall building upon the terms in said bid hereinabove mentioned, which said contract shall be in words and figures as follows, substantially, to-wit:

THIS AGREEMENT Made and entered into on this the _____ day of April, A.D. 1923, by and between Hoover & McNeil hereinafter designated and referred to as the "Contractor", and the City of Albany, a municipal corporation, and one of the regularly organized, constituted and existing cities of the State of Oregon, hereinafter designated and referred to as the "Owner"

W I T N E S S E T H :

That the Contractor in consideration of the agreement made by the Owner, agrees with said Owner as follows:

Article I. The Contractor shall and will provide all the materials and perform all the work for the complete construction of a Brick City Hall building for the City of Albany, to be constructed by the City of Albany, Oregon, a lot now owned by the City of Albany and situated in Block No. Sixteen (16) in the City of Albany, Oregon; all as shown by the drawings and described in the plans and specifications prepared by Chas. H. Burggraf, architect, Albany, Oregon, which said plans and drawings and specifications, as modified, are now on file and of record in the office of the City Recorder of the City of Albany, Oregon, and which are hereby expressly referred to and made a part of this contract.

Article II. It is understood and agreed by and between the parties hereto that the work included in this contract is to be done under the direction of said architect and the City Hall Committee of the City of Albany, and that the decision, as to the true construction and meaning of the drawings and specifications, of the architect shall be final.

It is also understood and agreed by and between the parties hereto that such additional drawings and explanations as may be necessary to detail and illustrate the work to be done, are to be furnished by said architect and the Contractor agrees to conform to and abide by the same, so far as they may be consistent with the purpose and intent of the Original drawings and specifications referred to in Article I.

It is further understood and agreed between the parties hereto that any and all drawings and specifications prepared for the purpose of this contract by the said architect, except the plans and specifications now on file in the City Recorder's Office, are and shall remain his property, and that all charges for the use of the same and for the services of

ORDINANCE NO. 1063

said architect are to be paid by the said Owner.

Article III. No alterations shall be made in the work, except upon the written order of the owner, and the amount to be paid by the Owner or allowed by the Contractor by virtue of said alterations, is to be stated in said order. Should the Owner and Contractor not agree as to the amount to be paid or allowed, the work shall go on under the order required above, and in case of a failure to agree, the decision of said amount shall be referred to arbitration as provided for in Article XII of this contract.

Article IV. The Contractor shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the architect, and the Owner or their authorized representatives. The Contractor shall within twenty-four (24) hours after receiving written notice from the architect or Owner to that effect, proceed to remove from the ground or building all material condemned by them, whether worked or unworked, and to take down all portions of the work which the architect or Owner shall by written notice condemn as unsound or improper, or as in any way failing to conform to the drawings, plans and specifications and shall make good all work damaged or destroyed thereby.

Article V. Should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality or fail in any respect to prosecute the work with promptness, vigor and diligency, or fail in the performance of any of the agreements herein contained, such refusal, neglect or default, being certified by the architect, the Owner shall be at liberty, after three (3) days written notice to the Contractor to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract, and the architect shall certify that such refusal, neglect or failure is sufficient ground for such action. The Owner shall also be at liberty to terminate the employment of this contract for said purpose of completing the work included under this contract, of all materials, tools and appliances therein and to employ any other person or persons to finish the work and to provide the materials, tools and appliances, thereon, and to employ any other person to finish the work and to provide the materials therefor, and in case of such discontinuance of the employment of the Contractor, he shall not be entitled to receive any further payment under this contract, until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expenses incurred by the Owner in finishing the work, such excess shall be paid by the Owner to the Contractor; but if such expenses shall exceed such unpaid balance the Contractor shall pay the difference to the Owner. The expenses incurred by the Owner as herein provided, either for furnishing materials or for finishing the work and

ORDINANCE NO. 1083

any damage incurred through such default shall be audited and certified by the architect, whose certificate thereof shall be final and conclusive between the parties.

Article VI. The Contractor shall complete the several portions and the whole of the work comprehended in this agreement by and at the time or times hereinafter stated, to-wit: The entire work shall be completed on or before the 15 day of August, 1923; and as for liquidated damages the Contractor shall pay to the Owner the sum of Ten Dollars (\$10) for each day that the work is not completed after the 15 day of August, 1923, until the work shall be completed; and the Owner shall have the right to retain any moneys in its possession due the Contractor to the extent of the amount of liquidated damages.

Article VII. Should the Contractor be delayed in the prosecution or completion of the work by the act, neglect or default of the Owner, of the architect, or of any other Contractor employed by the Owner upon the work, or by any damage caused by fire, lightning, earthquake, cyclone or other casualty, or any act of God, for which the Contractor is not responsible; or by strikes, or lockouts caused by the acts of employees, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid, which extended period shall be determined and fixed by the architect and City Hall Committee, but no such allowance shall be made unless a claim therefor is presented in writing to the architect or filed with the City Recorder within forty-eight (48) hours of the occurrence of such delay.

Article VIII. The Owner agrees to provide all labor and materials essential to the conduct of this work not included in this contract in such manner as not to delay its progress and in the event of failure so to do, thereby causing loss to the Contractor, agrees that it will reimburse the Contractor for such loss and the Contractor agrees that if he shall delay the progress of the work so as to cause loss for which the Owner shall become liable, then he shall reimburse the Owner for such loss.

Should the Owner and Contractor fail to agree as to the amount of loss comprehended in this agreement the determination of the amount shall be referred to arbitration as provided in Article XII of this agreement.

Article IX. It is hereby mutually agreed between the parties hereto that the sum to be paid by the Owner to the contractor for said work and materials shall be the sum of \$19321, subject to additions and deductions as hereinbefore provided, and that such sums shall be paid by the Owner to the Contractor in current funds and only upon

ORDINANCE NO. 1063

certificates of the architect and approval thereof by the City Hall Committee, as follows:

As the work progresses a sum equivalent to seventy-five per cent (75%) of the amount of labor and materials furnished upon said work, shall be paid to the contractor by the Owner and not more than one payment shall be made in any one month. When any part of the work is finished the Owner may pay for that part in full.

The final payment shall be paid within thirty (30) days after the completion of the work included in this contract and all payments shall be due when certificates for the same are issued and approved by the City Hall Committee, provided, however, the Owner may have the privilege of waiving the certificates.

If, at any time, there shall be evidence of any lien or claim for which, if established, the Owner of said premises might become liable and which is chargeable to the Contractor the Owner shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient to completely indemnify itself against such lien or claim. Should there prove to be any such claim after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay to discharge any lien on said premises made obligatory in consequence of the Contractor's default.

Article X. It is further mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment, and then only after approval by the City Hall Committee shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be acceptance of defective work or improper materials.

Article XI. The Owner may, during the progress of the work, maintain insurance on said work, in its own name and in the name of the Contractor against loss or damage by fire, lightning earthquake, cyclone or other casualty. The policies to cover all the work incorporated in the building and all materials for the same, at or about the premises and shall be made payable to the parties hereto as their interest may appear.

Article XII. In case the Owner and Contractor fail to agree in relation to matters of payment, allowances or losses referred to in Articles III and VIII of this contract, or should either of them dissent from the decision of the architect and City Hall Committee, referred to in Article VII of this contract, which dissent shall have been filed in writing with the architect or City Recorder within ten (10) days of the announcement of such decision, then the matter shall be referred to a Board of Arbitration, consisting of one person in behalf of the Owner and one person in behalf of the Contractor, these two to select a third; the deci-

ORDINANCE NO. 1063

sion of two of this board shall be final, conclusive and binding on the parties hereto. In the event of death or inability to serve, of the party named in behalf of the Owner, then the Owner shall select a person in his place; in the event of the death or inability to serve, of the party named in behalf of the Contractor, then the Contractor shall select a person in his place; in the event of death or inability to serve, of the third party then the remaining arbitrators shall choose a person in his place. Each party hereto shall pay one-half of the expense of such reference.

Article XIII. It is further agreed that the Contractor shall furnish an indemnity bond in the sum of \$10000.00 sufficient to protect the Owner against any damages to any person or persons employed on or about the building, and that no person shall be employed for more than eight (8) hours in any one day or forty-eight (48) hours in any one week, unless in case of an emergency, when no other competent labor is available and in such case, shall be paid double wages for all overtime, and said bond shall further be conditioned for the faithful performance, of said contract upon the part of the Contractor and further indemnifying the City of Albany against any claim or lien for labor, work or material on the part of any person, firm or corporation arising out of said contract, which said bond must be approved by the Mayor of the City of Albany.

Article XIV. The said parties for themselves, their heirs successors, executors, administrators and assigns do hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, The Contractor has hereunto set his hand and the City of Albany, a municipal corporation has caused this contract to be executed under and by virtue of an ordinance of the City of Albany, by its Mayor and Recorder on this the _____ day of April, 1923.

Contractor,
CITY OF ALBANY.
By _____
Mayor
By _____
Recorder.

Owner

Section 2. Whereas, it is necessary for the peace, welfare and good order of the City of Albany that said City Hall and all the work in connection therewith should be done at the earliest possible convenience, an emergency exists and is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage and

ORDINANCE NO. 1063

approval by the Mayor.

Passed by the Council, April 11th, 1923.

Approved by the Mayor, April 12, 1923.

A. P. Howells

Mayor pro tem

Attest: D. H. Bodine,

Recorder of the City of Albany, Oregon.


STATE OF OREGON,)

(ss

County of Linn,)

I, D. H. Bodine, Recorder of the City of Albany in Linn County and State of Oregon, do hereby certify that the foregoing and annexed copy of Ordinance No. 1063, has been by me carefully compared with the original Ordinance Bill No. 1160, now on file in my office and that it is a true and correct copy of all and the whole of said Ordinance Bill No. 1160, passed by the Council, April 11th, 1923, and approved by the Mayor, April 12, 1923.

WITNESS, my hand and official signature and the seal of the City of Albany, this 31 day of December, 1924.



Recorder of the City of Albany.