

**Highways, Improvement Of Within Incorporated Town,  
Contract For—Contract For Improvement of Highway With-  
in Incorporated Town.**

Form of contract for improvement of highway within in-  
corporated city or town.

May 27, 1920.

State Highway Commission,  
Helena, Montana,  
Gentlemen:

I am in receipt of your letter of the 20th Inst., with reference to the form of contract to be used where the highway to be improved is situated within a special improvement district of an incorporated city or town, the cost of such improvement to be paid for partly with

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funds received by the state from the Federal government, and partly by special improvement district or warrants issued by the city or town against such special improvement district. With such letter you have submitted the form of contract in general use by your commission, and copy of standard specifications.

The improvement being with a special improvement district of an incorporated city or town, notice inviting proposals must be given by such city or town and the proposals must be made to the city or town and opened by the council and the contract must be let by the council (Sec. 8, Chap. 89, Sess. Laws 1913), consequently the city or town is a necessary party to the contract. The funds received from the Federal government being required to be expended under its supervision through the agency of the State Highway Commission, the State is also a necessary party.

Under the special improvement district laws relating to incorporated cities and towns, the contractor must give the city or town a bond to the approval and satisfaction of the city council, in a sum not less than twenty-five per cent of the amount of the contract, (Sec. 12, Chap. 89, Sess. Laws 1913), while under the act creating the State Highway Commission the contractor is required to execute to the State a bond to be approved by the President of the Executive Committee of the State Highway Commission (Sec. 7, Chap. 170, Sess. Laws 1917, as amended by Chap. 3, Extra. Sess. Laws 1919), consequently the contractor must either furnish two bonds, one to the city or town and one to the state, or else furnish one bond in a sum not less than twenty-five per cent of the contract price running jointly to the State of Montana and to the city or town.

Examining the form of contract submitted I believe that the same will be sufficient and will meet with the approval of the Federal officers if it be changed and modified in the following respects:

1. Change the first part so that it will read as follows:

"This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 192—, between the —(City or town)— of \_\_\_\_\_, by its Mayor and Clerk, duly authorized by its Council, and the State of Montana, by the State Highway Commission, through its Executive Committee, hereinafter called the parties of the first part, and \_\_\_\_\_, his, her, or their heirs, executors, administrators and assigns, party of the second part, hereinafter called the Contractor."

2. Change the last page of the contract so as to read as follows:

"It is expressly understood and agreed between the parties hereto that as a condition precedent to the complete execution of this contract, the contractor will furnish a good and sufficient bond in the sum of \_\_\_\_\_ (\$\_\_\_\_\_), to be conditioned upon the faithful performance of the covenants and agreements as herein set forth by him to be performed, subject to the approval by the Council of the —(city or town)— of \_\_\_\_\_ and by the President of the Executive Committee of the State Highway Commission and the Attorney General of the State of Montana.

In witness hereof, the said —(city or town)— of \_\_\_\_\_ has caused its name to be hereunto subscribed by its Mayor and Clerk and its seal to be hereunto affixed, and the said State of Montana has caused its name to be hereunto subscribed by the President of the Executive Commission of the State Highway Commission, and the seal of said State Highway Commission to be hereunto affixed, and the said \_\_\_\_\_ has hereunto set his hand and seal the day and year first above written.

(City or town) of \_\_\_\_\_  
 By \_\_\_\_\_ Mayor,  
 Attest \_\_\_\_\_ City Clerk,  
 State of Montana,  
 By \_\_\_\_\_  
 President of Executive Committee of  
 State Highway Commission.

(Seal.)

If the contractor is a corporation the last two lines should be changed to read: "the said \_\_\_\_\_ has caused its name to be hereunto subscribed and its corporate seal to be hereunto affixed by its duly authorized officers," and the signature of the contractor should appear as follows: \_\_\_\_\_, By \_\_\_\_\_ ((Official Designation or Title))."

3. Throughout the body of the contract the changes should be made as I have indicated thereon.

The contract bond should be changed so as to appear as follows.

"to be paid to the (city or town) of \_\_\_\_\_ and the State of Montana," etc., and also as follows:

"Whereas, the above bounden Principal has entered into a contract with the (city or town) of \_\_\_\_\_, and the State of Montana, by the State Highway Commission, through its Executive Committee, bearing even date herewith, for the improvement construction of a certain section of highway in \_\_\_\_\_ County, State of Montana, Application No. F. A. \_\_\_\_\_, being approximately \_\_\_\_\_ (\_\_\_\_\_ ) in length, for approximately the sum of \_\_\_\_\_ (\$\_\_\_\_\_ ), the said highway being situated \_\_\_\_\_, and,

WHEREAS, it was one of the conditions of the award of the Council of the (city or town) of \_\_\_\_\_, and the State Highway Commission, through its Executive Committee, pursuant to which said contract was entered into, that these presents should be executed;

Now, therefore, the condition of this obligation is such that if the above bounden principal as Contractor shall in all respects comply with the terms of the contract and conditions of said contract, and his, their or its obligations thereunder, including the specifications therein referred to and made a part thereof and such alterations as may be made in said specification as therein provided for, and shall well and truly, and in a manner satisfactory to the Council of the (city or town) of \_\_\_\_\_, and the Executive Committee of the State Highway Commission, complete the work contracted for,

and shall save harmless the said (city or town) of \_\_\_\_\_ and the State of Montana, from any expense incurred through the failure of said Contractor to complete the work specified, or for any damages growing out of the carelessness of said Contractor or his, their, or its servants or employees, or for any liability for payment of wages due or material furnished said Contractor, and shall well and truly pay all and every person furnishing material or performing labor in and about the constructing of said roadway, and all and every sum or sums of money due him, them, or any of them, for all such labor and materials for which the Contractor is liable, and shall also save and keep harmless the said (city or town) of \_\_\_\_\_ and the State of Montana against any and from all losses to them or either of them, from any cause whatever, including patent, trademark and copyright, infringements, in the manner of constructing said section of roadway, then this obligation to be void, otherwise to remain in full force and effect."

I am returning herewith copies of contract, bond and specifications.

Truly yours,

S. C. FORD,

Attorney General.