

LOGISTICS MEMORANDUM

07-22

September 13, 2007

TO: Honorable Mayor Kathleen M. Novak and City Council Members

FROM: A.J. Krieger, City Manager *SK*
Kurt Kowar, Logistics Center Manager *KK*
Joliette Woodson, Civil Engineer II *JW*

SUBJECT: CR-86-2007, Citywide Drainage Improvements Contracts Award

RECOMMENDATION:

Attached to this memorandum is a Resolution which, if approved would authorize the Mayor to execute a contract between the City of Northglenn and Farnar Enterprises, Inc. for the 2007 Citywide Drainage Improvements Project in the amount of \$95,735.00 and authorize a contingency in the amount of \$9,574.00. Staff recommends approval of the proposed resolution.

BACKGROUND:

In a continuing effort to improve the City's stormwater infrastructure, Staff has identified a need to replace several inlets that have failed structurally or are undersized and to add several new manholes to the stormwater system to increase accessibility. On August 6, 2007, the City accepted five (5) formal bids. The low bid contractor is Farnar Enterprises, Inc. of Brighton, Colorado.

POTENTIAL OBJECTION:

City Staff is not aware of any specific opposition to the proposed Resolution.

BUDGET/TIME IMPLICATIONS:

The budget as proposed for the contract is \$95,735.00 with a contingency in the amount of \$9,574.00 for a total of \$105,309.00. Sufficient funds are available in the 2007 Capital Projects Stormwater Fund. (Account No 50569212000.3999.169)

STAFF REFERENCE:

Please contact Kurt Kowar, Logistics Center Manager at kkowar@northglenn.org, or (303) 349-3772.

SPONSORED BY: COUNCIL MEMBER MONROE

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-86
Series of 2007

Series of 2007

A RESOLUTION APPROVING AN AGREEMENT BETWEEN FARNER ENTERPRISES, INC. AND THE CITY OF NORTHGLENN FOR THE 2007 STORMWATER INFRASTRUCTURE IMPROVEMENTS PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Agreement between the City of Northglenn and Farner Enterprises, Inc., attached hereto, for the 2007 Stormwater Infrastructure Improvements Project is hereby approved, and the Mayor is authorized to enter into the Agreement on behalf of the City Council of the City of Northglenn.

DATED at Northglenn, Colorado, this ____ day of _____, 2007.

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

AGREEMENT

PROJECT NAME: 2007 STORMWATER INFRASTRUCTURE IMPROVEMENTS

PROJECT NUMBER: 2007 IFB – 11 PROJECT MANAGER: Joliette Woodson

THIS AGREEMENT, made this ____ day of _____, 20__, by and between the City of Northglenn, hereinafter called “CITY”, and Farner Enterprises, Inc., hereinafter called “CONTRACTOR”.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the project named:

 “2007 STORMWATER INFRASTRUCTURE IMPROVEMENTS”
2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor supervision, and other services necessary for the completion of the PROJECT described herein.
3. The CONTRACTOR will provide performance and payment bonds and a certificate of insurance naming the City as an additional insured for purposes of said project within 10 days after the date of the NOTICE OF AWARD.
4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$95,735.00, or as shown in the BID schedule. The CONTRACTOR will commence the work within 7 calendar days after the date of NOTICE TO PROCEED. The CONTRACTOR will complete the work within 60 working days after the date of NOTICE TO PROCEED unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
5. The term “CONTRACT DOCUMENTS” means and includes all items as set forth in Section 1.01 of the General Conditions.
6. The CITY will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.
7. This AGREEMENT shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in TWO copies, each of which shall be deemed an original on the date first above written.

CITY:

City of Northglenn
By _____
Name Kathleen M. Novak
Title Mayor

ATTEST:

Diana L. Lentz, CMC
Name _____
Title City Clerk

(SEAL)

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

CONTRACTOR:

By Donnie Farner
Name Donnie Farner
(Please Type or Print)

Title President
Address 16387 Harvest Mile Rd
Brighton Co 80603

(SEAL)

ATTEST:

TERRY LOYD
Name (Please Print or Type)
Title General Manager

CITY'S CONTRACT # _____

Joliette Woodson
Print Name of City's Project Manager

SECTION 5. BONDS AND INSURANCE REQUIREMENTS, LEGAL RESPONSIBILITY AND PUBLIC SAFETY

5.01 GENERAL:

The Contractor shall not commence work under this Contract until he has obtained all insurance required by the Contract Documents and such insurance has been approved by City, nor shall the Contractor allow any Subcontractor to commence work on this Project until all similar insurance required of the Subcontractor has been obtained and approved. During the life of this Contract, the Contractor must maintain the insurance coverage listed in Section 5. The City must be named as an additional insured. Limits of liability must be at least those set forth in the General Liability Insurance (Insurance Requirements) portion of this Contract. All policies of insurance required by this section shall be written by insurance companies licensed to do business in the State of Colorado.

5.02 INDEMNIFICATION:

The Contractor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the City, its officers, employees, agents and their insurers, from the against all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, which arises out of or is in any manner connected with this Contract, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of the Contractor, the Contractor's employees, subcontractors or anyone else employed directly or indirectly by the Contractor, Contractor's employees or subcontractor.

The Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims or demands at the sole expense of the Contractor, or at the option of the City, Contractor agrees to pay the City or reimburse the City for defense costs incurred by the City in connection with any such liability, claims, or demands. The Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

5.03 GENERAL LIABILITY INSURANCE: (Insurance Requirements)

- (A) The Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 5.02 above. Such insurance shall be in addition to any other insurance requirements imposed by

this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 5.02 above, by reason of its failure to obtain and maintain during the life of this Contract insurance in sufficient amounts, durations, or types.

- (B) Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 5.02 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- (1) Worker's Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of the work under this Contract, and Employers Liability Insurance with minimum limits of five hundred thousand dollars (\$500,000) each incident, five hundred thousand dollars (\$500,000) disease – policy limit, and five hundred thousand dollars (\$500,000) disease – each employee.
 - (2) General Public Liability Insurance to be written with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall be not less than one million dollars (\$1,000,000) for all damages arising out of the injury to or destruction of property in any one (1) accident and not less than two million dollars (\$2,000,000) for all damages arising out of injury to, or destruction of property, including the City's property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.
 - (3) Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of

Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

- (C) **The policy required by paragraph (2) above and by paragraph (3) above shall be endorsed to include the City of Northglenn and the City of Northglenn's officers, volunteers and employees as additional insured.** Every policy required above shall be primary insurance, and any insurance carried by the City of Northglenn, its officers, or its employees, or carried by or provided through any insurance pool of the City of Northglenn's, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required by paragraph (1) above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.
- (D) **The Certificate of Insurance, with an original signature (not a copy) shall be provided to the City of Northglenn, and shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City of Northglenn prior to commencement of the contract.** No other form of certificate shall be used. The certificate shall identify this contract and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City of Northglenn. The completed certificate of insurance shall be sent to:

City of Northglenn
PO Box 330061
11701 Community Center Drive
Northglenn, Colorado 80233

The Certificate of Insurance shall include the name of the project and formal bid number on the form.

- (E) Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the City of Northglenn may immediately terminate this contract, or at its discretion the City of Northglenn may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.

- (F) The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- (G) The parties hereto understand and agree the City of Northglenn is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City of Northglenn, its officers, its employees, or its volunteers.

5.04 PERFORMANCE, PAYMENT, MAINTENANCE AND WARRANTY BOND AND OTHER BONDS:

Contractor shall furnish a Performance, Payment, Maintenance and Warranty Bond on the City of Northglenn Approved Bond Form, in accordance with applicable Colorado statutes, in an amount at least equal to the Contract Price as security for the faithful performance, payment, maintenance and warranty of all Contractor's obligations under the Contract Documents. This Bond shall remain in effect at least until two (2) years after the date of Probationary Acceptance. Contractor shall also furnish such other Bonds as are required by the Special Conditions (if any). All Bonds shall be on City of Northglenn Approved Bond forms prescribed by the Contract Documents and be executed by such Sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the Authority to Act. If the Surety on any Bond furnished by the Contractor is declared bankrupt, or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this Section, Contractor shall within five (5) calendar days thereafter substitute another Bond and Surety, both of which shall be acceptable to City.

5.05 NOTICE OF CHANGES IN WORK:

If notice of any change affecting the general scope of the work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be the Contractor's responsibility to so notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to City.

5.06 PATENTS:

If any design, device, material or process covered by letters, patent or copyright is used by the Contractor, he shall provide for such use by legal agreement with the Owner of the patent or a duly authorized licensee of such Owner, and shall save harmless the City from any and all loss or expense on account thereof, including its use by the City.

5.07 PERMITS:

All permits and licenses necessary for the prosecution of the Work shall be secured by the Contractor. Waiver of fees for City projects will be considered on a project-by-project basis.

5.08 LAWS TO BE OBSERVED:

The Contractor shall give all notices and comply with all Federal, State and local laws, ordinances and regulations in any manner affecting the conduct of the work and all such orders and decrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the City against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order or decree, whether by himself, his subcontractor and all employees. The laws and regulations shall include, but are not limited to the following: City of Northglenn Municipal Code, City of Northglenn Utility Standards and Specifications, City of Northglenn Street & Drainage Standards and Specifications, City of Northglenn Construction and Excavation Standards Supplement for Work in Public Rights-of-Way, Department of Labor Occupational Safety and Health Administration Standards, Americans with Disabilities Act, Equal Employment Opportunity Act, 2003 International Building Code, 2003 International Plumbing Code, 2003 International Mechanical Code, 1997 Uniform Fire Code, and the 2003 National Electrical Code, as enacted by the City of Northglenn. If the Contractor observes that the specifications or drawings are at variance therein, he shall give Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate written modification.

5.09 WARNING SIGNS AND BARRICADES:

The Contractor shall provide adequate signs, barricades, lights, and watchmen and take all necessary precautions for the protection of the work and the safety of the public. All signs and devices shall conform to the Manual on Uniform Traffic Control Devices. The devices and signs shall be clean, legible, properly mounted and meet a quality standard rating of "acceptable" per the requirements of American Traffic Safety Services Association (ATSSA) Quality Standard for Work Zone Traffic Control Devices. All signs and devices used for night operation shall meet the retroreflective requirements of CDOT Standard Specifications Section 713.04.

When it is necessary to obstruct roadways or pedestrian ways, the Contractor shall submit traffic control plans, in compliance with the Manual of Uniform Traffic Control Devices (MUTCD). All traffic control plans shall be prepared under the supervision of a certified Work Site Traffic Control Supervisor. Documentation of certification shall be submitted with the traffic control plan.

When necessary for public safety and when required by the City, the Contractor shall employ flag persons to control traffic around or through the work site. All flaggers shall be CDOT certified and competent to perform the work.

The Contractor shall be responsible for maintaining all work area signing and barricading required throughout the duration of work. During non-work hours, all signs that are not appropriate shall be removed, covered or turned around so that they do not face traffic.

5.10 SAFETY AND PROPERTY PROTECTION:

The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property in the vicinity of the work, in a manner satisfactory to the Project Manager. No road, street, or sidewalk shall be closed to the public except with the permission of the Project Manager and proper governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches, and irrigation ditches, which shall not be obstructed except as approved by the Project Manager.

5.11 CONTRACTOR'S RESPONSIBILITY FOR SAFETY:

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- (a) all employees on the work and other persons who may be affected thereby;
- (b) all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and,
- (c) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for its safety and protection. All damage, injury, or loss to any property referred to in paragraphs (b) or (c) above, caused directly or indirectly, in whole or in part, by Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor; except damage or loss attributable to the fault of specifications or to the acts or omissions of City or Project Manager or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as all the work is completed and the Project Manager has issued a notice to the City and the Contractor in accordance with approval of final payment that the work is acceptable.

Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to City.

5.12 EXCAVATIONS:

The Contractor shall comply with all OSHA regulations including but not limited to the regulations contained in 29CFR, Subpart 1926. When excavation (as defined in the OSHA regulations) is required by the Contract, the Contractor shall designate a competent person who shall be on site for the duration of excavation activities. If requested by the Project Manager, the Contractor shall provide all information utilized by the competent person in making any determination on the safety of excavations. The Contractor shall also comply with all state and local regulations governing excavations including C.R.S. 9-1.5-101 et seq.

5.13 CROSSING UTILITIES:

When new construction crosses highways, railroads, streets or utilities under the jurisdiction of the State, County, City or other public agency, public utility or private entity, the Contractor shall secure written permission from the proper authority before executing such new construction. A copy of this written permission must be filed with the City before any work is done. The Contractor will be required to furnish a release from the proper authority before final acceptance of the work.

5.14 SANITARY PROVISIONS:

The Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his Subcontractors as may be necessary to comply with the requirements and regulations of the local and State Department of Health and as directed by the Project Manager.