

An adjourned meeting of the City Council was held in the Council Chamber, City Hall, at 4 o'clock p.m., on Friday, July 22, 1949, with Mayor Shaw presiding, and Councilmen Aitken, Albee, Boyd, Coddington, Daughtry, Jordan and Wilkinson present.

CONTRACT WITH FRANK T. MILLER, WITH RESPECT TO GRADE CROSSING ELIMINATION PROGRAM APPROVED.

Councilman Boyd advised that Mr. John D. Shaw, City Attorney and he had reviewed the proposed contract with Mr. Frank T. Miller, Engineer, relative to the grade crossing elimination program, as requested by Council, and were ready to present the redrafted contract in which only minor revisions had been made.

The contract between the City and Mr. Miller, providing for the Survey of ~~grade crossings on~~ the Southern Railway mainline tracks on the west of the city and freight tracks on the east, between the Seaboard Railway on the north and Morehead Street on the south, at a fee of \$16,000.00 for the Survey, and an amount not to exceed \$1,500.00 for necessary drilling during the survey, and the payment of an engineering fee of 6 percent of the construction costs in the grade crossing elimination work, with certain deductions, should Mr. Miller be retained to supervise the work, was read by the City Attorney and each paragraph discussed as presented.

During the discussion, it was pointed out by Councilman Boyd that the contract provides that the Mayor, City Manager and City Engineer will decide with the Engineer (Mr. Miller) regarding problems that arise during the project. He suggested that the provision be added that their decisions be subject to Council approval. It was explained by the City Attorney, and Mr. Miller, that the problems so referred to were those of a minor nature requiring immediate decision in order that the work not be delayed; that all major problems would be presented to the Council and decisions thereon be made by them.

Mr. Miller stated that the Survey could be completed not later than March 1950, and would be made in the order designated by Council.

It was explained by Mr. Shaw, City Attorney, that it was a personal service contract, and that should Mr. Miller become incapacitated then the City would have no Engineer in connection with the work, to which statement Mr. Miller, who was present, agreed.

Following the reading of the contract, Councilman Boyd stated he would prefer to know first where the funds were coming from for the construction of the grade crossing elimination program before signing the contract, in order to justify the expenditure of the survey fee. That he objected to the payment for the survey from taxpayers funds and then it be shelved because of unavailable funds for the project construction. Mr. Miller stated the Survey would be good for the next ten years at least should it be decided to postpone immediate construction.

Mayor Shaw stated he agreed with Councilman Boyd, however, the importance of a grade crossing elimination program was vital to the development of Charlotte and he believed the program to unblock the City should be inaugurated by going ahead with the survey.

Councilman Aitken moved that due to the far reaching effects of the contract, and the fact that it was submitted to Council in its final form

only today, that it would be wise to defer final action until next week's meeting. Motion was seconded by Councilman Daughtry, and did not carry, with the votes cast as follows:

AYE: Councilmen Aitken and Daughtry.

NAY: Councilmen Albea, Boyd, Coddington, Jordan and Wilkinson.

Several of the Councilmen stated they did not believe further study of the contract was necessary due to it having been explained by paragraph as it was read, and fully discussed, and, therefore, they felt a decision could well be reached today.

Whereupon, the following resolution was introduced and read:

RESOLUTION APPROVING CONTRACT WITH
FRANK T. MILLER RELATIVE TO GRADE
CROSSING ELIMINATION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

That the Mayor and City Clerk be, and they hereby are, empowered with the authority, on behalf of the City of Charlotte, to execute a contract with Frank T. Miller, Greensboro, North Carolina, with respect to grade crossing elimination in the City of Charlotte, and said contract is hereby ordered to be spread in full upon the minutes of this meeting.

Councilman Jordan moved the adoption of the resolution. Motion was seconded by Councilman Wilkinson, and the resolution was unanimously adopted.

C O N T R A C T

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

THIS AGREEMENT made and entered into this the 22nd day of July, 1949, by and between the CITY OF CHARLOTTE, Mecklenburg County, North Carolina, a municipal corporation organized and existing under and by virtue of the laws of said State, party of the first part, and hereinafter for convenience styled the City, and;

FRANK T. MILLER, Consulting Engineer, of Greensboro, Guilford County, North Carolina, party of the second part, and hereinafter for convenience styled the Engineer;

W I T N E S S E T H:

THAT WHEREAS, the said City desired to determine its best interests in the matter of locations for grade crossing elimination along the main line tracks of Southern Railway, from their crossing with the main line track of Rutherfordton Branch, Seaboard Air Line Railway, south to or near West Morehead Street underpass, and along the midtown or Columbia Division tracks of Southern Railway from their intersection with the main line track of Rutherfordton Branch, Seaboard Air Line Railway south to or near East Morehead Street overhead bridge, and along the A.T. & O. Railroad Company track from its junction with the midtown or Columbia Division tracks of Southern Railway to its junction with the main line tracks of Southern Railway at the Southern Passenger Station, and to determine further the necessary revisions, if any, to the grades of these railway tracks and city streets between the several points, which will better facilitate the design of grade crossing elimination structures at selected suitable locations, and

WHEREAS, the said City further desires to undertake grade crossing elimination projects at certain of the selected suitable locations, and

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WHEREAS, the said City has selected and does hereby employ the said Engineer to handle the aforesaid work for it; and

WHEREAS, the said Engineer does hereby accept the said employment from the said City;

NOW, THEREFORE, in consideration of the premises and of the covenants hereinafter mentioned, to be performed by the parties hereto, and of the payments to be made, as shall hereinafter be specified, it is mutually agreed as follows:

ARTICLE I. It is agreed between the parties hereto that the Mayor, the City Manager, and the City Engineer, shall represent the City in all matters and things to be considered under the provisions of this agreement, and the said Representatives, as they shall hereinafter be known, are hereby vested with full power and authority so to act.

ARTICLE II. It is further agreed between the parties hereto that all matters and things mutually decided upon by the said Representatives and the said Engineer, in connection with the work done under this agreement, shall be final and conclusive, so far as the Engineer and his duties under this agreement are concerned.

ARTICLE III. It is further agreed between the parties hereto that the Engineer will, as he may see fit, appoint all of his assistants, servants, and/or employees, who, when so assigned by him, may act for and in his stead in carrying on the work to be done under this agreement.

ARTICLE IV. It is further agreed between the parties hereto that the services to be performed by the Engineer, under this agreement, shall be divided into two parts, viz.,

Part 1. A General Prospectus.

Part 2. Detailed Plans for Grade Separation Structures And Supervision of Construction.

ARTICLE V. Part 1. A General Prospectus. This document will constitute general plans and profiles, setting forth the locations, where and how grade crossing elimination can be made feasible and practical within the area hereinabove designated for study, together with a description of each of the selected locations. The Prospectus will also include a statement of calculated quantities and estimated costs for the undertaking of each grade crossing elimination project recommended, such statements to be based upon field data obtained on the ground by the Engineer.

ARTICLE VI. Part 2. Detailed Plans for Grade Separation Structures And Supervision of Construction. Following consideration by the City of the Prospectus furnished to it by the Engineer and a determination as to which of the suggested grade crossing elimination projects shall be built, the City Council shall advise the Engineer of such determination. Thereupon it shall become the duty of the Engineer, in connection with each of the grade crossing elimination projects desired by the City to be undertaken and constructed, to prepare the designs, plans, specifications, estimates of cost and supporting construction contract documents, to cover the structure and approaches necessary to accomplish the separation of grades between the railway tracks and each street selected to be the subject of a grade crossing elimination project as aforesaid. The designs, plans, specifications, estimates of cost and other documents prepared by the Engineer in this connection shall show in detail such street grading and paving, and underground utility revisions as are necessary to provide the approaches to such grade separation structures as well as such retaining walls and other structures as may be found necessary to develop a completed project. The Engineer will supervise the construction work on each of said grade crossing elimination projects.

ARTICLE VII. It is further agreed between the parties hereto that when the Engineer shall have completed the plans and supporting papers incident to his work in each of the two parts contemplated by this Agreement, and the same have been approved by the City's Representatives, the said Engineer will, at his own expense, provide the City, through its Representatives

five (5) copies thereof, and if later it should be found that additional copies, in full or in part, are needed, he will, upon request from the said Representatives, furnish such additional copies to them, at cost.

ARTICLE VIII. It is further agreed between the parties hereto that the Engineer will prepare the advertisement for contractors' bids, which the City, at its own expense, will have published in such publications as its Representatives may see fit; that the Engineer will, on the days designated in the said Advertisement, have a representative from his staff on the ground to show prospective bidders over the work; that the proposals covering the work will be received by the City Council as prescribed in the said advertisement; and when opened and read they will be turned over to the said Engineer, who will tabulate the same, and turn a copy of the said tabulation over to the said Representatives, with his recommendations, and within ten days thereof the said City Council will award the work, or decline all bids and readvertise.

ARTICLE IX. It is further agreed between the parties hereto that as soon as the construction contract between the City and the Contractor has been executed, the said Representatives of the City will so notify the Engineer, in writing, including therewith a copy of the said executed contract between the City and the said Contractor, the receipt of which by the Engineer shall, of itself, vest him with full authority to proceed, for account of the City, and to carry to conclusion the Engineering supervision of the construction work on the said project.

ARTICLE X. It is further agreed between the parties hereto that the Engineer will, with the beginning of construction work on the said project, assign thereto such personnel as he may consider necessary, to assure the Contractor's faithful fulfillment of his contract.

ARTICLE XI. It is further agreed between the parties hereto that the Engineer will prepare both the partial payment and final payment estimates for the City's use in making partial and final settlements with the Contractor. The said estimates shall conform to the stipulations providing for the same as shall be written into the construction contract by the said Engineer.

ARTICLE XII. It is further agreed between the parties hereto that the City will pay the cost of the sounding investigations found necessary to be made by the Engineer, in the preparation of the Prospectus, in determining the quality of excavation quantities, and the depth of suitable foundation material for the grade separation structures recommended; provided, however, that the costs so assumed and paid by the City shall not exceed, in the aggregate, the sum of FIFTEEN HUNDRED DOLLARS (\$1,500.00).

ARTICLE XIII. It is further agreed between the parties hereto that the City will advance to the Engineer for traveling expenses to be incurred by him in connection with the work of preparing the Prospectus the sum of SIX HUNDRED DOLLARS (\$600.00), said sum to be paid in six monthly instalments of ONE HUNDRED DOLLARS (\$100.00) each, the first instalment becoming due and payable thirty (30) days following the date of the execution of this agreement. In addition, it is agreed that the said Engineer will bear the expenses and salaries of his assistants, servants and employees engaged on the said work at the Headquarters office at Greensboro, North Carolina; between Greensboro, North Carolina, and Charlotte, North Carolina; and at Charlotte, North Carolina, but that the said City will bear the traveling and hotel expenses of the said Engineer, his assistants, servants and employees on trips otherwise incident to the project, said trips to be authorized in writing by the City's Representatives before they are taken.

ARTICLE XIV. It is further agreed between the parties hereto that for his services and those of his staff as rendered hereunder, the Engineer's fees shall be as follows:

Section 14.1. For the development and preparation of the Prospectus as described in Article V hereof, the Engineer shall receive and the City hereby agrees to pay him, the sum of SIXTEEN THOUSAND DOLLARS (\$16,000.00) which sum shall be paid to the Engineer by the City upon the completion of the Prospectus and the delivery of five copies thereof to the City's Representatives, one copy of which shall bear the approval of the Southern Railway with respect to the grade crossing elimination projects recommended at locations along Southern Railway mainline tracks between the points hereinbefore designated and the grade crossing elimination project recommended at the intersection of the midtown or Columbia Division tracks of Southern Railway with a projection of Stonewall Street.

Section 14.2. It being specifically understood by the parties hereto that grade crossing elimination projects entailing total construction costs in excess of ONE MILLION DOLLARS (\$1,000,000.00) are expected to be undertaken by the said City, the Engineer shall receive, and the City hereby agrees to pay him, for his services and those of his staff as rendered in connection with Detailed Plans For Grade Separation Structures and Supervision of Construction as described in Article VI hereof, a fee aggregating six percent (6%) of the total construction cost of said work. In computing the total construction cost of the work there shall be included every item of expense incurred in connection therewith, such as costs of rights-of-way, street changes and the like; and in track construction the cost of track material shall be included, whether they be new, salvaged, or re-lay.

Section 14.3. The payments specified to be made under the terms of Section 14.2 above shall be made at such times and in such amounts as shall be mutually agreed upon by the Engineer and the City's Representatives at the time when the work specified to be done under Part 2. Detailed Plans for Grade Separation Structures and Supervision of Construction, shall be undertaken. It is distinctly understood between the parties hereto that it is within the sole discretion of the City Council of the City of Charlotte as to whether or not any construction project contemplated herein shall be undertaken. Should the City Council determine to undertake a construction project or projects as contemplated herein, a supplemental contract shall be entered into between the City and the Engineer with respect thereto, providing for terms of payment, etc. It is further distinctly understood and agreed that the six percent (6%) fee as hereinbefore provided for is not to apply unless the total construction cost of such projects initially authorized and undertaken shall aggregate at least ONE MILLION DOLLARS (\$1,000,000.00); and that in the event the total construction cost of such projects initially authorized and undertaken shall aggregate less than ONE MILLION DOLLARS (\$1,000,000.00), the fee payable to the Engineer for his work in connection therewith shall be the subject of further negotiation between the City and said Engineer.

Section 14.4. When construction work aggregating a total cost of ONE MILLION DOLLARS (\$1,000,000.00) shall have been completed in accordance with the plans and designs submitted by, and under the construction supervision of, the said Engineer, there shall be credited against the sums becoming due to the said Engineer under the terms of Section 14.2 above, FIVE THOUSAND DOLLARS (\$5,000.00) of the amount previously paid to him under the terms of Section 14.1 above; and when construction work aggregating a total cost of TWO MILLION DOLLARS (\$2,000,000.00) shall have been completed in accordance with the plans and designs submitted by, and under the construction supervision of, the said Engineer, there shall be credited against the sums becoming due to the said Engineer under the terms of Section 14.2 above, an additional FIVE THOUSAND DOLLARS (\$5,000.00) of the amount previously paid to him under the terms of Section 14.1 above; and when construction work aggregating a total cost of THREE MILLION DOLLARS (\$3,000,000.00) shall have been completed in accordance with the plans and designs submitted by, and under the construction supervision of the said Engineer, there shall be credited against the sums becoming due to the said Engineer under the terms of Section 14.2 above, the remaining SIX THOUSAND DOLLARS (\$6,000.00) of the amount previously paid to him under the terms of Section 14.1. above.

ARTICLE XV. It is further agreed between the parties hereto that all field notes, original drawings, sketches, computations, and manuscripts done and made by the said Engineer hereunder, shall be and remain the property of the said Engineer, it being to the best interest of both parties hereto that these documents remain in the files of the Engineer. The Engineer will, however, furnish to the said City, process copies of all of the said Drawings and/or duplicates of the said documents, at cost, if and when such request is made upon the said Engineer by the said City before or within thirty days after the final settlement date between the said City and the said Engineer covering the services rendered hereunder.

THIS AGREEMENT shall inure to the benefit of and be binding upon the legal representatives, successors and assigns of the parties respectively.

IN WITNESS WHEREOF, the said City, by authority of its City Council, has caused these presents to be signed by its Mayor and attested by its City Clerk and its Corporate Seal to be hereunto affixed, and the Engineer has hereunto set his hand and seal, all as of the day and year first above written; this agreement being executed in duplicate originals, one of which is retained by each of the parties hereto.

CITY OF CHARLOTTE, NORTH CAROLINA

ATTEST:

Mayor

City Clerk

Consulting Engineer

WITNESS AS TO ENGINEER:

APPROVED AS TO FORM:

John D. Shaw
City Attorney

APPOINTMENT OF L. L. LEDBETTER, CITY TREASURER, AS ACTING CITY MANAGER DURING ABSENCE OF CITY MANAGER ON VACATION.

Upon motion of Councilman Jordan, seconded by Councilman Coddington, and unanimously carried, Mr. L. L. Ledbetter, City Treasurer, was appointed Acting City Manager, without additional salary, during the absence of Mr. H. A. Yancey, City Manager, on vacation.

ADJOURNMENT.

Upon motion of Councilman Coddington, seconded by Councilman Jordan, and unanimously carried, the meeting was adjourned.

Lillian R. Hoffman
City Clerk