

COTTONWOOD HEIGHTS

RESOLUTION No. 2022-32

A RESOLUTION APPROVING AND RATIFYING A BID AND AWARDING A CONSTRUCTION CONTRACT TO NEWMAN CONSTRUCTION, INC. (STORM DRAIN ACCESS RESTORATION PROJECT)

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met on 21 June 2022 to consider, among other things, (a) approving and ratifying the City's acceptance of a \$418,465 bid from Newman Construction, Inc. ("Contractor") for construction work involving storm drain access restoration under the City's project no. 001.22 (the "Project"); and (b) authorizing the City's entry into an agreement for such construction services (the "Agreement") with Contractor on such terms and conditions as may be approved by the City's mayor and manager in consultation with the City's director of public works, the City engineer and the City attorney, a draft copy of which is annexed as an exhibit hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City's acceptance of Contractor's bid for the Project and to authorize the City's entry into the Agreement with Contractor as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the Council hereby (a) approves and ratifies the City's acceptance of Contractor's bid for the Project, and (b) authorizes the City's entry into the Agreement with Contractor on such terms and conditions as may be approved by the City's mayor and manager in consultation with the City's director of public works, the City engineer and the City attorney.

This Resolution, assigned no. 2022-32, shall take effect immediately upon passage.

PASSED AND APPROVED this 21st day of June 2022.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: Paula Melgar, Recorder



By: Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers Yea X Nay ___
Douglas Petersen Yea ___ Nay ___
J. Scott Bracken Yea X Nay ___
Shawn E. Newell Yea X Nay ___
Ellen Birrell Yea X Nay ___

DEPOSITED in the office of the City Recorder this 21st day of June 2022.

RECORDED this 22 day of June 2022.

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (this “*Agreement*”) is made effective 21 June 2022 between the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 2077 East Bengal Blvd., Cottonwood Heights, UT 84121 (“*Owner*”), and **NEWMAN CONSTRUCTION, INC.**, a Utah corporation whose address is 13331 South Redwood Road, Riverton, UT 84065 (“*Contractor*”).

ARTICLE 1 – WORK

1.01 Owner has identified 240 storm drain access features (manholes) in its public rights-of-way which are inaccessible for varying reasons. The work for this storm drain access restoration project (the “*Project*”) consists of overseeing the self- or sub-contracting of the construction phase services for access restoration. This includes but is not limited to the following items of work: mobilization, traffic control, and maintenance of traffic; restoration and reconstruction of storm water access structures to grade. The level of work required to restore access will vary from feature to feature. Pavement patching, earthwork, reconstruction of curb and gutter, repair of deteriorating piping, replacement of eroded fill and other miscellaneous remediations are expected albeit unpredictable and Contractor should prepare for such contingencies at all sites.

1.02 Contractor shall complete all the work identified in Section 1.01 above and any other related work specified, indicated or reasonably contemplated by the Contract Documents (“*Work*”).

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: **Cottonwood Heights – Storm Drain Access Restoration Project 001.22.**

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by T-O Engineers, Inc. (“*Engineer*”), who will act as Owner’s representative, assumes all duties and responsibilities, and has the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion*

The Contractor will commence the work required by the Contract Documents within ten (10) calendar days after the date of the Notice to Proceed; and will complete the same by 30 November 2022 unless the period for completion is extended otherwise by the Contract Documents.

4.03 Liquidated Damages

Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 and 4.03 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 or 4.03 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A below:

A. For all Work, the total sum of \$418,465.00, at the prices stated in Contractor's Bid attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.03.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.01 of the General Conditions.

a. 95% percent of Work completed (with the balance being retainage).
If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character

and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 95% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 97.5% of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 15.01 of the General Conditions and less 100% of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.05 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

7.01 All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate of 0% per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any and (2) reports and drawings of Hazardous Environmental Conditions, if any.

E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 6, inclusive).
2. Performance bond (pages 1 to 3, inclusive).
3. Payment bond (pages 1 to 3, inclusive).
4. General Conditions (pages 1 to 62, inclusive).
5. Supplementary Conditions (pages 1 to 81, inclusive).
6. Specifications as listed in the table of contents of the Project Manual. All work on this project shall conform to 2017 APWA Standards and Specifications or as listed in these project specifications. If there is a conflict, the more stringent standard will apply.
7. Drawings with each sheet bearing the following general title (or similar):
Cottonwood Heights--Storm Drain Access Restoration Project.
8. Addenda (numbers 0 to 0, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor Submitted Price/Contractor's Bid
 - b. Documentation submitted by Contractor prior to Notice of Award.
10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.

- b. Work Change Directives.
- c. Change Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Contractor's Certifications

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. “*Corrupt practice*” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "Collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

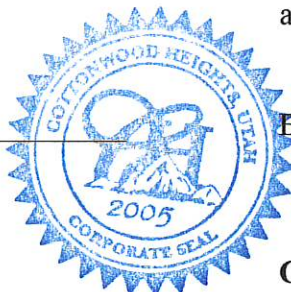
IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

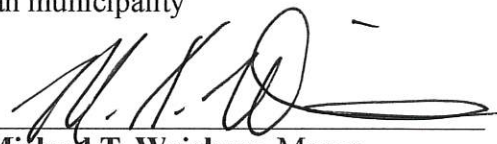
OWNER:

COTTONWOOD HEIGHTS,
a Utah municipality

ATTEST:

By: 
Paula Melgar, Recorder



By: 
Michael T. Weichers, Mayor

CONTRACTOR:

NEWMAN CONSTRUCTION, INC., a
Utah corporation

By: _____

Print Name: _____

Its: _____

License No. _____