

COTTONWOOD HEIGHTS

RESOLUTION No. 2024-19

A RESOLUTION APPROVING AN AGREEMENT WITH BOWEN COLLINS & ASSOCIATES FOR CONSTRUCTION MANAGEMENT SERVICES

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met in regular session on 19 March 2024 to consider, among other things, approving an independent contractor agreement (the "Agreement") with Bowen Collins & Associates, Inc. ("Provider") whereunder Provider would provide construction management and related services in connection with City's planned storm drain improvements project under City's project no. 009.23 as described in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed 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 the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

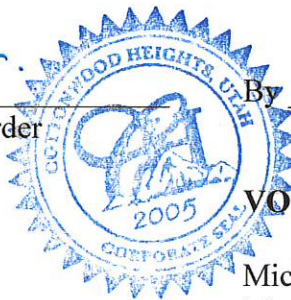
This Resolution, assigned no. 2024-19, shall take effect immediately upon passage.

PASSED AND APPROVED effective 19 March 2024.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Paula Melgar, Recorder



By: 
Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers	Yea <input checked="" type="checkbox"/>	Nay <input checked="" type="checkbox"/>
Matt Holton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Suzanne Hyland	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Shawn E. Newell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Ellen Birrell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 19th day of March 2024.

RECORDED this 20 day of March 2024.

Independent Contractor Agreement

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "*Agreement*") is made effective 19 March 2024 by **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("*City*"), and by **BOWEN COLLINS & ASSOCIATES, INC.**, a Utah corporation whose address is 154 East 14075 South, Draper, UT 84020 ("*Contractor*"). In this Agreement, City and Contractor are each a "*party*" and collectively are the "*parties*."

RECITALS:

A. City desires to obtain from a qualified expert construction management and related services concerning the construction of storm drain improvements under City's project no. 009.23 (the "*Project*").

B. Contractor regularly provides such services and on or about 29 February 2024 submitted a proposal to City in response to a request for proposals (the "*RFP*") previously issued by City concerning the services desired by City. A copy of Contractor's proposal (the "*Proposal*") is attached hereto as Exhibit "A."

C. After reviewing the Proposal City has determined to retain Contractor to provide the subject services.

D. By this Agreement, City desires to retain Contractor, and Contractor desires to be retained by City, to perform the subject services on the terms and conditions specified herein.

E. City and Contractor intend to identify herein the services to be performed for City by Contractor, the basis of compensation for such services, and to otherwise set forth their entire agreement concerning the subject services. Consequently, this Agreement shall supercede any and all prior or contemporaneous negotiations and/or agreements, oral and/or written, between the parties concerning the services to be provided under this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Section 1. **Scope of Services.** Contractor shall provide the services (collectively, the "*Services*") to City that are described in the RFP, the Proposal, and below, as well as all ancillary and associated services as may be reasonably necessary or advisable to complement and complete the Services, all as contemplated by all applicable legal requirements and best practices. Subject to the foregoing, the Services shall include the following:

(a) **Phases.** The Services shall be divided into the phases, steps and work described in the Proposal.

(b) **Public Meetings.** Contractor shall attend such public meetings concerning the Services as City reasonably may direct. City shall schedule and advertise all public meetings

or hearings. City may request Contractor to make a presentation concerning the Services and the Project at one or more public meetings to receive public input and direction from City. All reasonable and final adjustments to the resulting Project requested by City will be made by Contractor prior to its final adoption/approval by City.

(c) Schedule. It is anticipated that the Project will be completed and the Services will be fully rendered by approximately 31 August 2024. Contractor shall comply with such performance schedule for the component Services as City reasonably may direct upon reasonable prior notice to Contractor.

(d) Deliverables. Contractor shall provide all deliverables identified in the Proposal, as well as such other documentation and deliverables as City reasonably may request.

(e) Other Services. Contractor shall perform all other services and work as specified in the Proposal, or as may be mutually agreed to by the parties in writing.

If Contractor believes that any of the aforementioned Services merit payment of any additional fee beyond the Fee (defined below), then Contractor shall so inform City in advance before undertaking any of such additional services, describing the need for such additional services and the not to exceed cost of providing them. If City desires Contractor to proceed with any such additional services, City shall so inform Contractor in writing. Contractor may not perform any additional services, or seek compensation therefor, without City's prior written consent.

Section 2. Performance of Services. Except as otherwise provided in this Agreement, Contractor shall furnish all supervision, personnel, labor, materials, supplies and shall obtain all licenses and permits required for performance of the Services. The Services shall be performed at Contractor's offices and other mutually-agreeable places.

Section 3. Compensation; Invoices; Remittance. City shall compensate Contractor for the Services satisfactorily performed at the hourly rates specified in the Proposal, up to the maximum amount of \$88,490.00 (the "Fee") plus any additional amount due under the last paragraph of Section 1, above.

(a) Invoices. Contractor shall invoice City for the Services performed during each calendar month at the end of that month or as soon as practical thereafter. All invoices submitted to City shall contain references to this Agreement. Invoices shall detail the Services performed and shall contain copies of all supporting documents or proof of any expenditures on behalf of City, and otherwise shall be in sync with the stage of completion of the Services outlined in the Proposal. Invoices for any approved additional services also shall specify the person(s) performing such services, the hours worked, the applicable hourly rate(s),

(b) Questioned Charges. Any questions or objections by City concerning Contractor's charges under an invoice for the any services shall be submitted within 30 days after City's receipt of the subject invoice.

(c) Remittances. Subject to subsection 3(b), all invoiced amounts due for Services performed shall be paid by City within 30 days after City's receipt of the subject invoice. If payment is not remitted or reasonably questioned to Contractor when due, Contractor

shall be entitled to recover interest thereon at the rate of 10% per annum from and after the date the remittance is due and payable.

Section 4. **Change in Level of Services.** City shall be freely entitled to modify (increase or decrease) the level of the Services hereunder by providing at least 15 days' prior written notice to Contractor of such change, provided that (a) any increase in the level of the Services shall be subject to Contractor's reasonable approval, and (b) Contractor's compensation shall be reasonably modified in connection with any such change.

Section 5. **Suspension of Services.** City shall have the absolute right to terminate the Services at any time without cost or liability to Contractor as provided in this Agreement. City also may by written notice direct Contractor to temporarily suspend performance of any or all of the Services for a specified period of time. If such suspension is not occasioned by the fault or negligence of Contractor, this Agreement may be modified to compensate Contractor for extra costs reasonably incurred as a result of said suspension, provided that any claim for adjustment is supported by appropriate cost documentation and asserted within 20 calendar days after the date that City issues an order for resumption of the Services. Upon its receipt of any such suspension notice, Contractor immediately shall (a) discontinue the Services; (b) place no further orders or subcontracts in connection with the Services; (c) suspend all outstanding orders and subcontracts in connection with the Services; (d) protect and maintain the existing work and work-product in connection with the Services; and (e) otherwise mitigate City's costs and liabilities for the suspended areas of the Services.

Section 6. **Termination for Convenience.** City may terminate this Agreement, or any part hereof, at any time with or without cause prior to its completion by sending to Contractor written notice of such termination. Upon any such termination, City shall pay to Contractor the full amount due for all Services satisfactorily performed by Contractor as of the date of termination, excluding damages or anticipated profits on work not yet completed or performed.

Section 7. **Ownership of Designs and Drawings.** All documents (whether printed or stored on paper or as electronic, magnetic, or digital information) produced or collected by Contractor in its performance of the Services (including, without limitation, original drawings, estimates, specifications, field notes and data) (collectively, the "*Documents*") are and shall remain the exclusive property of City. Conditioned only on City's payment to Contractor of the amounts due hereunder, at the conclusion of the Services or any earlier termination thereof Contractor shall deliver to City all Documents, whether or not complete. Contractor may, at its expense, reproduce for its own records the Documents so supplied to City. Contractor may not disclose, sell, use, publish or display any Documents or other information collected or produced in connection with its performance of this Agreement without City's prior written consent.

Section 8. **Nondisclosure; Conflict of Interest.** Contractor shall not divulge to third parties without City's prior written consent any information obtained from or through City in connection with the performance of this Agreement. Unless waived by City, Contractor shall require its employees and subcontractors of any tier to adhere to the same covenant of nondisclosure. Contractor shall safeguard the confidentiality of any information obtained from or through City in connection with the performance of this Agreement to the same extent as Contractor safeguards the confidentiality of its own proprietary or confidential information. Contractor and its subcontractors shall not act as a Contractor in any matters adverse to City.

Section 9. **Compliance with Laws.** Contractor shall at all times comply with all applicable federal, state and local laws, statutes, rules, regulations, and ordinances, including, without limitation, those governing wages, hours, desegregation, employment discrimination, workers' compensation, employer's liability and safety. Contractor also shall comply with all applicable equal opportunity laws and regulations.

Section 10. **Patent and Copyright.** If Contractor's employees, officers, agents, subcontractors of any tier, or anyone of a like nature in the performance of the Services or as a result of performing the Services develop any trade secret, prepare any copyrighted material, make any improvement, originate any invention, or develop any process or the like (collectively, an "Innovation"), (a) such Innovation shall be the property of Contractor, but (b) Contractor shall grant or cause to be used for the benefit of City (or for City's own internal use) the Innovation for so long as City reasonably desires.

Section 11. **Independent Contractor Status.** Contractor shall perform the Services as an independent contractor, and all persons employed by Contractor in connection herewith shall be employees or independent contractors of Contractor and not employees of City in any respect.

(a) **Control.** Contractor shall have complete control and discretion over all personnel providing Services hereunder.

(b) **Salary and Wages.** City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to personnel providing Services hereunder.

(c) **No Employment Benefits.** All personnel providing Services are and shall be and remain Contractor's employees, and shall have no right to any City pension, civil service, or any other City benefits pursuant to this Agreement or otherwise.

Section 12. **Assignment.** Contractor shall not assign this Agreement, or any part thereof, without City's prior written consent. Any attempted assignment in violation of this section shall be void from its inception.

Section 13. **Subcontracts.** Except for those subcontractors which are specified in the Proposal, Contractor shall not award any work to any subcontractor without City's prior written approval, which approval will not be given until (a) Contractor submits to City a written statement (containing such information as City may require) concerning the proposed award to the subcontractor, and (b) City has reasonably approved such proposed subcontract.

Contractor shall be as fully responsible to City for the acts and omissions of Contractor's subcontractors, and of persons either directly or indirectly employed by such subcontractors, in the same manner as Contractor is liable for the acts and omissions of its own employees. Contractor shall cause appropriate provisions to be inserted in all subcontracts to bind subcontractors to Contractor by the terms and conditions of this Agreement insofar as applicable to the work of subcontractors, and to give Contractor the same power to terminate any subcontract as City may exercise over Contractor under this Agreement. Nothing in this Agreement, and no course of dealing, shall create any contractual relationship between City and any of Contractor's subcontractors.

Section 14. **Accounting and Auditing.** Contractor shall keep accurate and complete records in support of all remuneration paid hereunder. City, or its audit representative, shall have the right at any reasonable time(s) to examine, audit, and reproduce all records pertaining to costs, including but not limited to payrolls, employees' time sheets, invoices, and all other evidence of expenditures for the Services. Such records shall be available for one year after completion of the Services.

Section 15. **Non-Exclusive Rights.** Nothing in the Agreement is to be construed as granting to Contractor the exclusive right to perform any or all of the Services from time to time required by City.

Section 16. **Indemnification.**

(a) **By Contractor.** Contractor shall indemnify and hold harmless City and City's elected and appointed officers, employees, agents, successors and assigns (collectively, "City Parties") from and against any and all demands, liabilities, claims, damages, costs (including attorney fees), actions or proceedings (collectively, "Losses"), arising from or related to the breach by Contractor of its obligations under this Agreement or Contractor's intentional or negligent acts or omissions hereunder, except to the extent that such Losses are caused by, or arise from, Contractor's good faith reliance upon the instruction, direction, negligence or misconduct of any of the City Parties.

(b) **By City.** City shall indemnify and hold harmless Contractor, its affiliates and each of their respective directors, officers, employees and subcontractors (collectively, "Contractor Parties") from any and all of any of Contractor Parties' Losses arising from or related to the breach by City of its obligations under this Agreement or the negligent acts or omissions of City hereunder, except to the extent that such Losses are caused by, or arise from City's good faith reliance upon the instruction, direction, negligence or misconduct of any of the Contractor Parties.

Section 17. **Insurance.** Without limiting any obligations of Contractor, Contractor shall prior to commencing work secure and thereafter continuously throughout the term of this Agreement carry insurance in accordance with City's standard insurance requirements set forth on attached Exhibit "B" and shall furnish proof thereof satisfactory to City promptly when requested.

Section 18. **Professional Responsibility.** Contractor shall perform the Services using equal or higher standards of care, skill and diligence as normally provided by a professional in the performance of services similar to those contemplated hereunder. Without limiting any other remedies available to City, if Contractor fails to comply with such professional standards, Contractor shall, upon notice from City, promptly re-perform the sub-standard work at Contractor's sole cost.

Section 19. **Examination of Work.** All Services shall be subject to examination by City at any reasonable time(s). City shall have the right to reject any unsatisfactory work. Neither examination of the Services, lack of the same, acceptance of the Services by City nor payment therefor shall relieve Contractor from its obligations under this Agreement regarding the quality and accuracy of the Services.

Section 20. **Progress.** Contractor shall submit periodic written progress reports as reasonably requested by City. City or its agents or representatives may visit Contractor's offices at any reasonable time(s) to determine the status of the Services.

Section 21. **Conflict Resolution.** Except as otherwise provided herein, in the event of a dispute between the parties regarding the Services which is not disposed of by agreement, the resolution of the dispute shall be decided by City, which shall provide written notice of its decision to Contractor. Such decision by City shall be final unless Contractor, within 30 calendar days after such notice of City's decision, provides to City a written notice of protest, stating clearly and in detail the basis thereof. Contractor shall continue its performance of this Agreement during such resolution. If the parties do not agree, then the parties shall resolve the dispute pursuant to section 22 below.

Section 22. **Claims and Disputes.** Claims, disputes and other issues between the parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, Contractor shall continue to perform the Services during any such litigation and City shall continue to make payments to Contractor in accordance with the terms of this Agreement.

Section 23. **Notice.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties at their addresses specified above or such substitute or additional addresses as a party previously may have provided to the other parties through written notice.

Section 24. **City's Cooperation.** City will provide the following assistance to Contractor in connection with the Services:

(a) **Representative.** Designate a representative of City to act as Contractor's point of contact with respect to the Services.

(b) **Information.** Provide to Contractor access to all non-confidential information pertaining to the Services that is in City's possession or is reasonably available to City. Contractor shall not be responsible for errors or omissions in any City-provided information, nor for delays in completing the Services attributable to City's delay in providing required information.

(c) **Staff Assistance.** Such support of City's staff as City determines, in its sole discretion, to make available to Contractor.

Section 25. **Conflicts.** In the event of inconsistencies within or between this Agreement, the attached exhibits, the RFP, the Proposal or applicable legal requirements, Contractor shall (a) provide the better quality or greater quantity of Services, or (b) comply with the more beneficial requirements to City, either or both in accordance with City's reasonable interpretation.

Section 26. **Additional Provisions.** The following provisions also are integral to this Agreement:

(a) **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

(b) **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

(c) **Applicable Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

(d) **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

(e) **Time.** Time is the essence hereof.

(f) **Survival.** All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

(g) **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

(h) **Rights and Remedies.** The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

(i) **Severability.** In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(j) **Litigation.** If any action, suit or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the nonprevailing party.

(k) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such exhibits and writings.

(l) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered electronically by facsimile, pdf transmission or similar, with the same legal effect as manual execution and physical delivery.

(m) Authorizations. Each person signing this Agreement represents and warrants that (s)he is authorized to sign this Agreement for the party indicated.

DATED effective the date first-above written.

CONTRACTOR:

BOWEN COLLINS & ASSOCIATES, INC.,
a Utah corporation

By:  
Digitally signed by Keith J. Larson
Reason: I agree to the terms defined by the placement of my
signature on this document
Date: 2024.03.14 07:52:01 -05'00'

Name and Title: Keith Larson, Vice President

CITY:

COTTONWOOD HEIGHTS

ATTEST:

By: 
Paula Melgar, Recorder



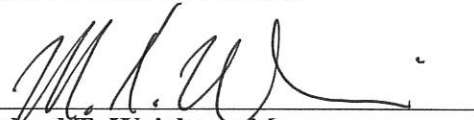
By: 
Michael T. Weichers, Mayor

Exhibit "A" to
Independent Contractor Agreement

(Attach Contractor's 13 March 2024 Proposal)



**Cottonwood Heights
2024 Storm Drain Improvements Construction Management**

**Bowen Collins & Associates
Scope of Services**

DATE: March 13, 2024

PROJECT: 2024 Storm Drain Improvements Construction Management Services

PROJECT MANAGER: Justin Dietrich, P.E.;
Bowen, Collins & Associates

PROJECT LOCATION: Cottonwood Heights, Creek Road from Approximately 2640 East to 2850 East and Cory Hill Circle

BACKGROUND AND PURPOSE

The purpose of this Scope of Work is to identify the scope of tasks associated with providing construction management services for the Cottonwood Heights 2024 Storm Drain Improvements project.

CONSTRUCTION PERIOD SERVICES

Task 1: Construction Progress Meetings and Construction Management Services. BC&A will take the lead on managing construction for this project. Work under this task consists of preparing for, attending, and documenting a pre-construction meeting and attending up to 13 on-site (or at City Offices) weekly progress meetings. BC&A will perform up to five site visits and one final walk through. We will prepare punch list items at the final walk through. BC&A will also review materials testing and QA/QC data, prepare any needed change orders or field orders, and process submittals and pay applications. Pay applications will be forwarded to the City for final approval and payment. Finally, BC&A will provide an electronic CM system for use by the contractor, BC&A, and the City.

Task 2: Construction Observation and Inspection Services. Our experienced field representatives will observe construction and coordinate with the contractor. BC&A will coordinate with the City's project manager about on-site activities. BC&A's scope of services is to provide three-quarter time (30 hours per week) of on-site project observation during construction over an estimated 13-week (3-month) active construction period.

Task 3: Record Drawings and Project Closeout Support. BC&A will prepare record drawings for the project based on contractor-provided as-built survey and redlines. Record drawings will be delivered to the City in electronic file PDF format upon completion of the project.

PROPOSED PROJECT SCHEDULE

The proposed project schedule is summarized as follows:

Award of Construction Contract March 2024

Construction Period Construction Final Completion by
August 31, 2024

COST SUMMARY

We have tabulated estimated man-hours and costs to complete each task outlined in the previously defined scope of services. As presented in the attached Table 1, we propose to complete the proposed scope of services on a time and expenses basis for a fee not to exceed \$88,490.

EXCLUDED SCOPE ITEMS

It is understood that the following services are not included in this phase of BC&A's scope but can be provided separately if desired by Cottonwood Heights City.

1. **Permit Coordination.** It is BC&A's understanding that the Contractor will be responsible for coordinating and obtaining any permits required for construction.
2. **Public Outreach.** BC&A and the City mutually agree that no public meetings have been included in the current scope and fee. We will require public notification, outreach, and coordination to be conducted by contractor as is typical. If public meetings are requested per the agreement, this work will be provided on a time and materials basis.

Table 1
 Cottonwood Heights 2024 Storm Drain Improvements
 Construction Management Fee Estimate
 2/29/2024

Task No.	Task Description	Office/Support		Technicians		Engineers			Construction Managers	Subtotal Hours	Subtotal Labor	Subtotal Expenses	Total Cost	
		Clerical	Clerical	Tech 5	Staff Eng	Staff Eng	PM	Principal						
	Labor Category													
	Labor Rate	\$99	\$111	\$140	\$143	\$131	\$170	\$238	CM VII	\$187				
Construction Period Services														
1	Construction Progress Meetings and Construction Period Services	4		8	49	71	50	10			192	\$28,704	\$480	\$29,184
2	Construction Observation/Inspection Services	1				390			13		404	\$53,620	\$2,080	\$55,700
3	Record Drawings and Project Closeout Support	1	1	14	4	4	2				26	\$3,606	\$0	\$3,606
Construction Period Total											622	\$85,930	\$2,560	\$88,490

Expenses include:
 Mileage reimbursement at \$0.75/mile
 10% Markup on Outside Services

Exhibit "B" to Independent Contractor Agreement

INSURANCE REQUIREMENTS FOR PARTIES CONTRACTING WITH THE CITY OF COTTONWOOD HEIGHTS

The contracting party shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the contracting party, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contracting party's bid.

A. MINIMUM LIMITS OF INSURANCE.

The contracting party shall maintain limits no less than:

1. *Professional Liability*: \$2,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage, including "tail coverage" for at least one year after completion of all services.

2. *Automobile Liability*: \$1,000,000.00 combined single limit per accident for bodily injury and property damage. "Any Auto" coverage is required.

3. *Worker's Compensation*: Worker's compensation limits as required by applicable law for all employees and other persons.

4. *Commercial General Liability*: \$2,000,000.00 combined single limit per occurrence for personal injury and property damage; \$2,000,000.00 annual aggregate. Broad Form Commercial General Liability is required (ISO 1993 or better). Personal injury, premises-operations, products-completed operation, independent contractors and subcontractors fire legal liability and, when appropriate, coverages for explosion, collapse and underground (XCU) hazards.

5. *Excess Liability*. \$5,000,000.00.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS.

Any deductibles (5% limit), self-insured programs or retentions must be declared to and approved by the city of Cottonwood Heights (the "City"). At the option of the City, either: the insurer may be required to reduce or eliminate such deductibles or self-insured retentions as respect to the City, its officers, officials and employees; or the contracting party may be required to procure a bond guaranteeing payment of losses and related investigations, claim distribution and defense expenses.

C. NOTICE OF INCIDENT OR ACCIDENT.

The contracting party shall agree to promptly disclose to the City all incidents or occurrences of accident, injury, and/or property damage covered by the insurance policy or policies.

D. OTHER INSURANCE PROVISIONS.

The policies are to contain, or be endorsed to contain, the following provisions:

1. *General Liability and Automobile Liability Coverages.*

(a) The City, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the contracting party; products and completed operations of the contracting party; premises owned, leased, hired or borrowed by the contracting party. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

(b) The contracting party's insurance coverage shall be a primary insurance as respects to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the contracting party's insurance and shall not contribute with it.

(c) Any non-material failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(d) The contracting party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

2. *Worker's Compensation and Employer's Liability Coverage.*

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the contracting party for the City.

3. *All Coverages.*

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled before its expiration date except after thirty (30) days' prior written notice (from the insurer) by first class mail, return receipt requested, has been given to the City.

E. ACCEPTABILITY OF INSURERS.

Insurance is to be placed with insurers with a Bests' rating of no less than A:VII, unless approved by the Manager.

F. VERIFICATION OF COVERAGE.

The contracting party shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time.

G. SUBCONTRACTORS.

The contracting party shall include all subcontractors as insureds under its policy or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.