

Resolution No. 22-12

A RESOLUTION RATIFYING AN AGREEMENT WITH POST ASPHALT CONSTRUCTION FOR THE REPAIR OF THE 6100 SOUTH 1350 EAST INTERSECTION; AUTHORIZING THE CITY MANAGER TO SIGN ANY AND ALL NECESSARY DOCUMENTS; AND, PROVIDING FOR AN EFFECTIVE DATE

SECTION 1 - RECITALS

WHEREAS, the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of the State of Utah; and,

WHEREAS, the City Council finds that in conformance with Utah Code ("LTC") §10-3- 717, the City Council as the governing body of the City may exercise all administrative powers by Resolution; and,

WHEREAS, the City Council finds that the asphalt at the intersection of 6100 South and 1350 East needs to be repaired for the safety of the City's residents; and,

WHEREAS, the City Council finds that to ensure the safety of the intersection an agreement with a qualified construction service provider should be in place; and,

WHEREAS, the City Council previously gave permission to the City Manager to sign an agreement and other necessary documents with Post Asphalt Construction to repair the intersection of 6100 South and 1350 East; and,

WHEREAS, the City Council finds that City now desires to further those ends by ratifying the prior contract with Post Asphalt Construction to provide such services;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH OGDEN UTAH THAT:

The City Council of South Ogden City, State Of Utah, Authorizes And Approves An Agreement With Post Asphalt Construction Inc. For Repair of the 6100 South 1350 East Intersection And Authorizes The City Manager To Negotiate And Resolve Any Additional Terms To The Agreement That May Be Necessary To Give Effect To The Intent Of This Resolution, And To Sign Said "**Contract Agreement**" (Attached Hereto As **Attachment "A"**) And By This Reference Fully Incorporated; And Authorizes The City Recorder To Attest All Documents Necessary To Confirm That The City Manager Has Been Duly Authorized To Execute Those Documents.

That the foregoing recitals are incorporated herein.

BE IT FURTHER RESOLVED this Resolution shall become effective immediately upon its passage.

SECTION 2 - REPEALER OF CONFLICTING ENACTMENTS:

All orders and resolutions regarding the changes enacted and adopted which have heretofore been adopted by the City, or parts thereof, which conflict with any of this Resolution, are, for such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

SECTION 3 - PRIOR RESOLUTIONS:

The body and substance of all prior Resolutions, with their provisions, where not otherwise in conflict with this Resolution, are reaffirmed and readopted.

SECTION 4- SAVINGS CLAUSE:

If any provision of this Resolution shall be held or deemed to be or shall be invalid, inoperative or unenforceable for any reason, such reason shall not render any other provision or provisions invalid, inoperative or unenforceable to any extent whatever, this Resolution being deemed to be the separate independent and severable act of the City Council of South Ogden City.

SECTION 5 - DATE OF EFFECT

This Resolution shall be effective on the 19th day of April, 2022, and after publication or posting as required by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF SOUTH OGDEN CITY, STATE OF UTAH, on this 19th day of April, 2022.

SOUTH OGDEN CITY

Russell Porter
Mayor

ATTEST:

Leesa Kapetanov, CMC
City Recorder

ATTACHMENT "A"

Resolution No. 22-12

**A Resolution Ratifying An Agreement With Post Asphalt Construction
For The Repair Of The 6100 South 1350 East Intersection; Authorizing
The City Manager To Sign Any And All Necessary Documents; And,
Providing For An Effective Date**

19 Apr 22

CONTRACT AGREEMENT

THIS AGREEMENT is by and between SOUTH OGDEN CITY CORPORATION (hereinafter called OWNER) and Post Asphalt Paving and Construction (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1- WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

DESCRIPTION OF WORK: The work consists of contractor providing the labor, materials and equipment to sawcut, remove and replace asphalt and valve box/monument collars at 6100 South 1350 East.

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:

Asphalt Patch at 6100 South 1350 East

ARTICLE 3- CONTRACT TIMES

3.01 *Time of the Essence:* All time limits for completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 *Dates for Completion and Final Payment:* The Work will be completed within **60** working days following Notice to Proceed.

3.03 *Liquidated Damages:* CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.02 above, plus any extensions thereof allowed. 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 \$200.00 for each day that expires after the time specified in paragraph 3.02 for Completion until the Work is accepted.

ARTICLE 4- CONTRACT PRICE

4.01 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 the paragraph below:

For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item as measured in the field.

UNIT PRICE WORK

<u>No.</u>	<u>Item</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
1	Asphalt patch at 6100 S. 1350 E.	7,500	Sq. ft		\$23,700.00
		approx.			

TOTAL OF ALL UNIT PRICES Twenty Three Thousand Seven Hundred Dollars and no cents (\$23,700.00).

ARTICLE 5- PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments:* CONTRACTOR shall submit Applications for Payment to OWNER no more than one time per each month.

5.02 *Progress Payments; Retainage:* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in paragraphs 5.02(1)(A) and 5.02(1)(B). All such payments will be measured by the schedule of values indicated:

1. Prior to 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 OWNER may determine or OWNER may withhold, in accordance with the following:

A. 95% of Work completed (with the balance being retained). If the Work has been 50% completed as determined by the OWNER, and if the character and progress of the Work have been satisfactory, OWNER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made; and

B. 25% of cost of materials and equipment not incorporated in the Work (with the balance being retained).

2. Upon Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100% of the Work completed.

5.03 *Final Payment:* Upon final completion and acceptance of the Work, OWNER shall pay the remainder of the Contract Price.

ARTICLE 6- INTEREST

6.01 All moneys not paid when due shall bear interest at the rate of 1% per annum.

ARTICLE 7- CONTRACTOR'S REPRESENTATIONS

7.01 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 obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions at, or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto

F. CONTRACTOR does not consider that any 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 correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

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 8- CONTRACT DOCUMENTS

8.01 *Contents:*

A. The Contract Documents consist of the following:

1. This Agreement;
2. Performance Bond;

3. Payment Bond;
4. Addendum;
5. Exhibits these Agreements;
 1. Notice to Proceed;
 2. CONTRACTOR's Bid;
 3. Documentation submitted by CONTRACTOR prior to Notice of Award;

11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- Written Amendments;
- Work Change Directives;
- Change Order(s).

The documents listed in paragraph 8.01

- A. Are attached to this Agreement (except as expressly noted otherwise above).
- B. There are no Contract Documents other than those listed above in this Article 8.
- C. The Contract Documents may only be amended, modified, or supplemented by OWNER through work change orders or quantity modifications.

ARTICLE 9- MISCELLANEOUS

9.02 *Assignment of Contract:* Assignment by a party hereto of any rights under or interests in the Contract will not 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.

9.03 *Successors and Assigns:* 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.

9.04 *Severability:* 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.

9.05 *Termination Due To Non-Appropriation:* Owner may terminate this Agreement if any of the following events shall have occurred and Contractor has received, not less than 30 days prior to the end of Owner's then current fiscal year, a written opinion from Owner's counsel verifying the occurrence of these events:

- a) If funds are not budgeted and appropriated in any fiscal year for payments due under this Agreement for the succeeding fiscal year, or for acquiring services, equipment or functions, which in whole or in part are essentially the same as those being obtained, this Agreement shall not obligate the Owner as to such succeeding fiscal year and shall become null and void except as to the payments herein agreed upon for which funds will have been appropriated and budgeted, and no right of action or damage shall accrue to the benefit of Contractor, its successors and assigns, for any further payments;
- b) If the provisions of Section (a) are utilized by Owner, Owner agrees to immediately notify the Contractor or its assignee of this Agreement that funds were not budgeted and appropriated, and to peacefully surrender possession of the Equipment to Contractor or its assignee.
- c) Owner made all payments due during the fiscal period immediately preceding the fiscal period for which sufficient funds were not appropriated.

Any early termination due to non-appropriation must be at the end of Owners then-current fiscal year.

9.06 *Voluntary Termination* Either party may, without cause, and upon written notice to the other party, terminate the agreement. The Owner shall pay the Contractor for all services rendered prior to the termination date.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

SOUTH OGDEN CITY CORPORATION

Post Asphalt Paving and
Construction

By: *Madeline J. Dixon*

By: *Jerrod Flink*



Attest: *Jessie J. Speta*

Attest: *Preston Hodson*

Address for giving notices:

Address for giving notices:

Same as below.

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign)

Designated Representative:

Name: _____

Name: Jerrod Flink

Title: _____

Title: Estimator/Project Manager

Address: _____

Address: !762 West !350 South

Phone: _____

Phone: Ogden, UT 8440!

NOTICE OF AWARD

DATED: April 13, 2022

TO: Post Paving and Construction

ADDRESS: 1762 W. 1350 S. Ogden, UT 84404

PROJECT: 6100 South 1350 East Asphalt Patch

You are notified that your Bid dated March 24, 2022, for the above project has been considered. You are the apparent Successful Bidder and have been awarded a Contract for the 6100 South 1350 East Asphalt Patch Project. The Contract Price of your Contract is: Twenty-Three Thousand Seven Hundred Dollars and 00/100 (\$23,700.00). Actual total price will be based on the sum of work items completed (as measured in the field) multiplied by the unit prices for each item.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award:

1. Submit a Signed Contract Agreement

Failure to comply with these conditions within the time specified will entitle OWNER to consider your Bid in default, to annul this Notice of Award and to declare your Bid security forfeited.

Within ten days after you comply with the above conditions, OWNER will return to you one fully executed counterpart of the Contract Documents.

South Ogden City Corporation
(OWNER)



(AUTHORIZED SIGNATURE)

(TITLE)



PUBLIC WORKS

NOTICE TO PROCEED

Dated April 13, 2022

CONTRACTOR: Post Paving and Construction

ADDRESS: 1762 W. 1350 S. Ogden, UT 84404

PROJECT: 6100 South 1350 East Asphalt Patch

You are notified that the Contract Times under the above contract will commence to run on April 13, 2022 by that date, you are to start performing your obligations under the Contract Documents. The date of Completion is May 28, 2022. Thereafter, liquidated damages will be assessed at the rate of \$200.00 per calendar day.

Before starting any Work at the Site, you must provide certificates of insurance to the owner. Also, you must notify the Owner's designated Project Inspector, prior to commencement of construction activities.

Matthew J. Dixon
(OWNER)

By: Matthew J. Dixon
(AUTHORIZED SIGNATURE)

City Manager
(TITLE)