

**MIDVALE CITY, UTAH
RESOLUTION NO. 2014-R-20**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT
WITH BOWEN CONSTRUCTION FOR THE INSTALLATION OF THE
ADAMS STREET STORM DRAIN PROJECT**

WHEREAS, the area along Adams Street has experienced flooding problems in the past, and requires constant monitoring by City personnel during storm events; and

WHEREAS, this area currently has inadequate drainage facilities in place to handle the amount of storm water runoff generated; and


WHEREAS, the City engaged Bowen Collins & Associates to study this area and develop plans and specifications for a project to solve this flooding issue; and

WHEREAS, the City advertised this project for bid and received several responses from qualified contractors; and

WHEREAS, City staff along with Bowen Collins & Associates, after reviewing the bid documents, have determined that Bowen Construction has the lowest bid price and is the most qualified to do this work.


NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve this agreement between Midvale City and Bowen Construction, and authorizes the Mayor to sign the agreement.

APPROVED AND ADOPTED this 6th day of May, 2014.



JoAnn B. Seghini, Mayor

ATTEST:



Rori L. Andreason, MMC
City Recorder



Voting by the City Council	"Aye"	"Nay"
Stephen Brown	<input checked="" type="checkbox"/>	_____
Paul Glover	<input checked="" type="checkbox"/>	_____
Robert Hale	<input checked="" type="checkbox"/>	_____
Paul Hunt	<input checked="" type="checkbox"/>	_____
Wayne Sharp	<input checked="" type="checkbox"/>	_____

SECTION 00 52 00
AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT

THIS AGREEMENT is by and between Midvale City Corporation

(Owner) and Bowen Construction Co.

(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, 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: furnish all labor, tools, materials, and equipment needed to construct improvements defined in the Contract Documents, complete, associated with the Midvale Adams Street Storm Drain Project.

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:

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Bowen, Collins & Associates (Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have 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

A. 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 and Final Payment

A. The Work will be substantially completed within 30 consecutive calendar days of notice to proceed or no later than June 15, 2014, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions.

4.03 Liquidated Damages

A. 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 4.02 above, plus any extensions thereof allowed in accordance with Article 12 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 \$ 1,000 or each day that expires after the time specified in Paragraph 4.02 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 for each day that expires after the time specified in Paragraph 4.02 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 established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Bid Schedule included in the Bid Form. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 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 25th day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.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 14.02 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, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, 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).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 300 percent 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 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall be placed in an interest-bearing account.

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 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.

E. 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.

F. 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.

G. 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.

H. 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.
2. Notice Inviting Bids.
3. Instructions to Bidders.
4. Performance Bond.
5. Payment Bond.
6. General Conditions.
7. Supplementary Conditions.
8. Specifications as listed in the table of contents of the Project Manual.
9. Drawings consisting of all sheets listed on attached sheet index.
10. Addenda.
11. Exhibits to this Agreement:
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.

12. 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 Order(s).

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 Other Provisions

A. NONE.

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 April 22, 2014 (which is the Effective Date of the Agreement).

OWNER:

Midvale City
By: John B. Beghini

Title: Mayor

Attest: [Signature]
[CORPORATE SEAL]  [CORPORATE SEAL]

Title: City Recorder

Address for giving notices:

1055 W. Center Street
Midvale, UT 84047

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

CONTRACTOR:

Bowen Construction Co.
By: [Signature]

Title: Sec/Treas

Attest: [Signature]
[CORPORATE SEAL]

Title: Sec/Treas

Address for giving notices:

1120 West 500 No.
Centerville, UT 84014

License
No.:

22-230181-5501
(Where applicable)

Agent for service or
process:

George Bowen

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