

**RESOLUTION NO. 09-03-2014**

A RESOLUTION OF THE SANTAQUIN CITY COUNCIL  
AUTHORIZING THE EXECUTION OF AN AGREEMENT TO  
COMPLETE REPAIRS TO, AND RESTORATION OF, MAIN STREET  
PLANTER BOXES, AND TO RESOLVE CERTAIN ISSUES RELATED  
TO THE DESIGN AND CONSTRUCTION OF THE PLANTER BOXES

WHEREAS, the City of Santaquin ("the City") is a Fifth Class City and a political subdivision of the State of Utah; and

WHEREAS, certain planter boxes were constructed along Main Street between 400 East and 200 East as part of the recent Main Street Renovation Project; and

WHEREAS, the planter boxes have deteriorated and have required more maintenance and repair than was anticipated at the time of construction; and

WHEREAS, the Santaquin City Council has determined that repair and renovation of the planter boxes with materials better suited to the surrounding conditions is in the best interest of the City; and

WHEREAS, after compliance with applicable notice and bidding procedures, the City received a bid for the repair and restoration of the planter boxes; and

WHEREAS, the City Council desires now to enter into an agreement for the repair and renovation of the planter boxes in a way that will promote the health, safety, and welfare of the City and will reduce annual maintenance; and

WHEREAS, J.U.B. Engineers, Inc. and Condie Construction, Inc., the engineer and general contractor for the Main Street project, desire to assist the City in providing for the repair and restoration of the planter boxes.

**PROFESSIONAL AGREEMENT  
WITH INDEPENDENT CONTRACTOR**

This Agreement (hereinafter referred to as "Agreement") is made this 18th day of September, 2014, by and between SANTAQUIN CITY, 275 West Main Street, Santaquin, Utah (hereinafter referred to as the "City"), and KLH Construction, LLC, of 801 East Center Street, Pleasant Grove, Utah (hereinafter referred to as the "Contractor").

**RECITALS**

A. Contractor owns and operates a masonry business at the address set forth above, and owner desires to have the following services performed within Santaquin City:

B. Contractor agrees to perform these services for owner under the terms and conditions set forth in this contract.

NOW THEREFORE, in consideration of the mutual promises set forth in this contract, it is agreed by and between the City and Contractor:

**Description of Work.** The work to be performed by Contractor includes all services generally performed by Contractor in Contractor's usual line of business of masonry work, including those project specifications and requirements listed on Exhibit "A."

**Payment.** Owner will pay contractor the amount of \$64,740, according to Contractor's formally submitted bid for the work to be performed under this contract. Payments will be made within 30 days of completion of the work and receipt of invoice.

**Retainage (hold back).** Owner and Contractor agree that a 5% retainage or "hold back" will be held from the final payment. This retainage will serve as a warranty amount to ensure that the project will last and function as intended. So long as the project is constructed and remains intact over the winter months, this retainage will be released to the Contractor on or around May 1, 2015. Release of the retainage is contingent on a final warranty inspection and acceptance by the City after said inspection.

**Term of the Contract:** Contractor agrees to commence the services required under this Agreement on or before *September 18, 2014* and the entire services performed must be completed on or before *October 15, 2014*. In the event the parties mutually decide to extend this Agreement beyond the term outlined in this Agreement, the parties shall negotiate new terms, conditions and provisions to this Agreement.

**Default:** A default hereunder shall occur if either party shall default in the performance or observation of any covenant or condition of this Agreement to be performed or observed, or by breach of any specification, duty or requirement set forth in Exhibit "A" hereto. If Contractor fails to complete its assigned duties and responsibilities as set forth herein, Contractor shall be in default.

**Remedies:** In the event of any breach or default of this Agreement by either party hereto, as defined in the section entitled "Default," then this Agreement may be declared terminated by the non-breaching party. This Agreement and the terms and conditions shall then expire upon receipt of the notice of termination by the breaching party. The rights and remedies afforded to the non-breaching party in the foregoing sentence shall not be exclusive, but shall be in addition to all other legal rights and remedies.

The exercise of any right or remedy by the non-breaching party shall not be to the exclusion of any other right or remedy.

**Independent Contractor:** Contractor's relationship with City under this Agreement shall be that of an independent contractor. Contractor certifies that he has done work for others in a similar capacity as this project. All training of Contractor's employees, if any, shall be done by Contractor and not by the City. Contractor is exercising its own discretion in the method and manner of performing its duties, and the City will not exercise control over contractor or its employees.

**Taxes and Laws:** Contractor acknowledges that, as an independent contractor, Contractor is responsible for paying all state and local taxes. Contractor is responsible for workman's compensation and other insurance required by law. Contractor certifies that Contractor has complied with all Federal, State and Local laws regarding business licenses, employment, permits and certificates.

**Time is of the Essence:** Both parties acknowledge that time is of the essence.

**Liability.** The work to be performed under this contract will be performed entirely at Contractor's risk, and Contractor assumes all responsibility for the condition of all materials, tools and equipment used in the performance of this contract and in the execution of the work.

**Insurance.** Contractor agrees to obtain and maintain general public liability insurance and property damage insurance with the Owner named as an additional insured, in an appropriate rate determined by the City Engineer, throughout the construction period.

**Indemnity.** Contractor and its successor and assigns hereby agrees to indemnify, defend (with counsel acceptable to the City) and hold the City, its elected officials, officers, employees and volunteers harmless from any and all liens, encumbrances, costs, demands, claims, judgments, injuries, employee claims and/or damage caused or arising out of (a) the acts and omissions of Contractor and its agents, servants, employees, and/or contractors and (b) any work performed by the Contractor, its agents, servants, employees, consultants and/or contractors. The terms and conditions of this provision shall remain effective after the expiration or termination of this Agreement, so long as the event for which the indemnification is needed occurred prior to such expiration or termination.

**Other Laws.** Contractor may be responsible to fulfill other federal, state and local laws, including, but not limited to Workers Compensation and Occupational Safety and Health Administration regulations. Contractor agrees to comply with all laws during construction of the improvements under this contract.

**Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of Owner, which shall not be unreasonably withheld.

**Attorney's Fees:** If any party is required to retain legal counsel in order to enforce this Agreement, with or without the commencement of a formal legal action, such party shall be entitled to recover its attorney's fees and costs from the breaching party or parties. In addition, City shall be entitled to attorney's fees and costs for all expenses arising out of a default by the Contractor.

**Change Orders:** The parties may agree to change the scope of the work contained in the project. Change Orders must be in writing and signed by both parties. Change Orders must contain the change agreed upon and a specific cost or credit associated with the change in work.

**Binding Effect:** This Agreement shall be binding on the parties and their respective heirs successors and assigns.

**Governing Law:** This Agreement shall be governed by the laws of the State of Utah.

**Modifications:** This Agreement shall not be amended or modified except by written document signed by the party to be charged with such amendment or modification.

**Notices:** Any notice, demand, request, consent, approval or other communication (collectively, the "Notices") required or permitted to be given by any provision of this Agreement shall be in writing and sent by hand-delivery, by special courier (for example Federal Express), by United States Certified Mail (return receipt requested, postage prepaid), or by telefax, addressed to the party to be so notified. Notice pursuant to this Agreement shall be deemed given pursuant to the following rules: if hand delivered, at the time of delivery; if sent by special courier, on the third (3rd) day after deliver to the courier; if mailed, on the later of the date of receipt or the third day after deposit thereof in the United States Mails; and if sent by telefax, on the date that the telefax is acknowledged as received.

**Assignment:** Contractor may not assign this Agreement without the written consent of City.

**No Waiver:** No failure to exercise, delay in exercising or single or partial exercise of any right, power or remedy by any party hereto shall constitute a waiver thereof or shall preclude any other or further exercise of the same or any other right, power or remedy.


**Section Headings:** The headings and captions contained in this Agreement are for convenience only and shall not be considered in interpreting the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, to be effective for all purposes as of the date first written above.

SANTAQUIN CITY

By:   
Title: MAYOR

CONTRACTOR - KLH

By:   
Title: Member

## EXHIBIT "A"

### Project Specifications for Santaquin City Corporation Main Street Planter Box Real Natural Stone Fascia

#### Description:

Santaquin City currently has 26 planter boxes along 2 sides (north and south sides) of 2 blocks (200 east to 400 each) of Santaquin Main Street. These planter boxes require a new real stone fascia and real stone cap stones to be furnished and installed. The planter boxes are constructed of reinforced concrete foundation walls that are 8" thick.

There is currently faux stone fascia installed on some of the planter boxes. In other areas the faux stone fascia has completely failed. Santaquin City staff will remove and dispose of the existing faux stone and mortar. There are currently no cap stones installed on the planter boxes.

The Contractor shall provide, furnish and install the following:

- 1" X 1" X 3/16" angle iron lintel to support the weight of the real stone that will be installed as part of this project
  - The above provided lintel shall be installed using mechanical attachment (anchor bolts) of sufficient strength and frequency to support the weight of the real stone fascia
  - The above provided lintel shall provide sufficient relief from possible upward movement of the sidewalk or hard surface below and adjacent to the planter boxes
- Furnish and install real natural stone of 7/8" to 1" thickness with a smooth back and rough face
  - The above provided stone shall use random colors in the grey and taupe neutral color ranges. No other colors of stone will be allowed
  - All proposed real natural stone color, shape, texture, etc. shall be approved by Santaquin City staff, prior to award of contract
  - The above provided natural stone shall be of a granite type stone. No soft stone will be allowed (i.e. no sandstone, no slate, etc.)
- Furnish and install appropriate mortar bonding adhesive to concrete foundation walls prior to application of mortar
- Furnish and install full coverage metal lath with full mechanical attachment
- Furnish and install a full coverage coat of mortar for a water tight seal
- Furnish and install real natural stone, rectangular "U" shaped, for a full coverage cap stone
  - The above furnished cap stone shall be of the same material as the stone fascia provided
- Furnish and install a full coverage coat of sealer appropriate for real natural stone

The contractor is required to reinstall the existing precast Santaquin City logo stones as part of the work described herein

All contractors wanting to be considered for this project must be licensed within the State of Utah, bonded and insured and must provide verification of such prior to award of a contract

All contractors wanting to be considered for this project must be able to provide sufficient legal work force to complete the work and must provide verification of such prior to award of a contract

All contractors wanting to be considered for this project must be able to provide a sufficient work force to complete the work on or before October 15, 2014 and must provide verification of such ability prior to award of a contract

All contractors wanting to be considered for this project must provide, in writing, a full 2 year repair and replacement warranty for all work completed on this project

All proposed products will require real rock samples and data submittals for consideration prior to award of contract

Approval of all proposed products will only come from the Santaquin City staff after review of submitted materials

No bid bond is required as part of the contract

Santaquin City reserves the right to reject any or all bids or portions thereof