



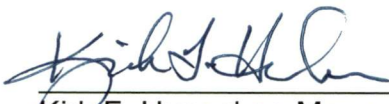
**RESOLUTION 08-04-2015**  
**ADOPTION OF AN AGREEMENT WITH BENNETT**  
**PAVING FOR ROAD PAVING SERVICES**


**BE IT HEREBY RESOLVED:**

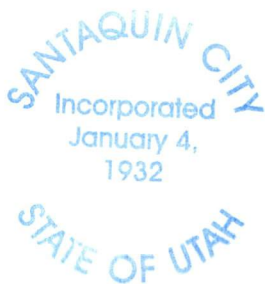
**SECTION 1:** To approve an Agreement with Bennett Paving for Road Paving Services (See Attached).

**SECTION 2:** This Resolution shall become effective upon passage.

Approved on the 19<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_  
Kirk F. Hunsaker, Mayor

  
\_\_\_\_\_  
Susan B. Farnsworth, City Recorder



## PROFESSIONAL AGREEMENT WITH INDEPENDENT CONTRACTOR

This Agreement (hereinafter referred to as "Agreement") is made this 19<sup>th</sup> day of August, 2015 by and between **SANTAQUIN CITY**, 275 West Main Street, Santaquin, Utah (hereinafter referred to as the "City"), and **Bennett Paving & Construction, Inc.**, of P.O. Box 1326, Spanish Fork, Utah 84660 (hereinafter referred to as the "Contractor").

### RECITALS

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

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

C. Contractor agrees to construct all street/roadway paving improvements according to both Santaquin City Standards and Specifications (most current) **AND** APWA standards (most current). If there is or becomes a conflict between these two standards, Contractor agrees that the more stringent of the two standards applies and improvements will be constructed according to the more stringent standard.

D. Contractor agrees that the City will conduct the following testing:

- Nuclear density testing to determine that adequate compaction is achieved
- Random core samples will be taken at locations determined by City staff. These core samples will help the City to determine that adequate asphalt thickness is reached, per the attached Contractors proposed Bid.
- The City will conduct depth testing both right behind the laydown machine, prior to any compaction efforts, as well as after compaction efforts to help determine that adequate asphalt thickness is reached, per the attached Contractors proposed Bid.

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 upon the City's request may include any or all services generally performed by Contractor in Contractor's usual line of business of street/roadway paving services work, including those project specifications and requirements listed in Exhibit "A" and Exhibit "B" included herein.

**Payment:** City will pay Contractor an amount commensurate with the amount of Work performed by the Contractor, according to Contractor's formally submitted bid for the Work to be performed under this contract. The Contractor's formally submitted bid for the Work is attached as Exhibit "B". City will only pay the Contractor for Work performed that has been requested and duly authorized in advance by the City's Public Works Director pursuant to a signed work order. City will not pay for any Work performed by the Contractor that has not been so authorized by the City's Public Works Director. Payments will be made 50% upon completion and 50% within 90 days of completion of the Work and receipt of invoice.

**Term of the Contract:** Contractor agrees to commence only those services required under this Agreement as directed by the City's Public Works Director. The term of this Agreement shall begin on August 19, 2015 and shall end on October 30, 2015, unless terminated earlier pursuant to the provisions of 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" and/or Exhibit "B" hereto. If the 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 it 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, or be responsible for the means and methods of 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 worker's compensation and other insurance required by law. Contractor certifies that Contractor has complied, or will timely comply, 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.

**Indemnity:** Contractor and its successors and assigns shall 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 damages caused or arising out of (a) the acts and omissions of Contractor and its agents, servants, employees, and/or subcontractors and (b) any work performed by the Contractor, its agents, servants, employees, consultants and/or subcontractors. 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 is responsible to comply with all applicable federal, state and local laws and regulations, including, but not limited to Workers Compensation and Occupational Safety and Health

Administration regulations. Contractor agrees to comply with all laws during Work performed 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 City, 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.

**Scope of Work and Change Orders:** The City anticipates that some of the City's street/roadways will be paved within the original term of this Agreement; however, it reserves the right to adjust the amount of work performed pursuant to this Agreement in its sole discretion, without incurring responsibility to compensate Contractor for any amounts beyond or in addition to those per unit prices set forth in Exhibit "B" hereto, including lost profits, anticipated profits, etc. The parties may agree to change other aspects of the scope of the Work for the project by Change Order, if needed. All 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 Both Parties.

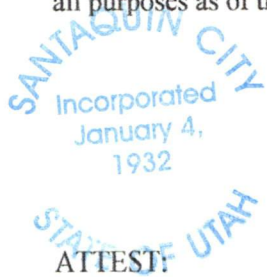
**Notices:** Any notice, demand, request, consent, approval or other communication (hereinafter referred to as "Notices") required or permitted to be given by any provision of this Agreement shall be in writing and sent by hand-delivery, by special courier (for example Federal Express), by United States 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 received 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.

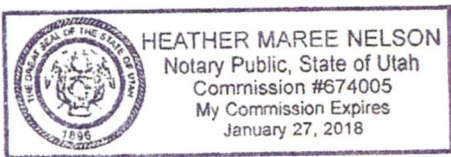
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, to be effective for all purposes as of the date first written above.



SANTAQUIN CITY

*Kirk L. Hunsaker*  
Kirk L. Hunsaker, Mayor

*Susan B. Farnsworth*  
Susan B. Farnsworth, City Recorder



*Heather Maree Nelson*

BENNETT PAVING & CONSTRUCTION, INC.

By: *Trevor Bennett*  
Title: *President*

STATE OF UTAH

ss:

COUNTY OF UTAH

On this 18 day of August, 2015, personally appeared before me Trevor Bennett, who after being duly sworn stated that he/she is the President of BENNETT PAVING & CONSTRUCTION, INC.; that he/she is authorized by said entity to execute, and did execute, the foregoing agreement.

EXHIBIT "A"

Modified Project Specifications for  
Santaquin City Corporation  
Street/Roadway Paving

**DIVISION 11M**

**ROADWAY CONSTRUCTION**

**MODIFICATIONS TO SANTAQUIN STANDARD SPECIFICATIONS**

**Replace the following paragraph in Section 11.12 (BITUMINOUS ASPHALT CEMENT PAVEMENT):**

The bituminous material for the surface course shall be AC-5, AC-10, or AC-20 penetration asphalt cement conforming to the requirements of ASTM D-445. 85-100 penetration asphalt cement conforming to the requirements of ASTM M20-60 may be used when specifically approved by the Public Works Representative/Engineer.

**With the following:**

The bituminous material for the surface course shall be PG 58-28 performance graded asphalt cement conforming to the requirements of ASTM D 6373.

**Replace the following Table in Section 11.12 (BITUMINOUS ASPHALT CEMENT PAVEMENT):**

**With the following:**


Sieve Size	Percent Passing
1/2 inch	100
3/8 inch	66-91
No. 4	42-58
No. 16	17-31
No. 50	9-21
No. 200	4-8

**Add the following to Section 11.12 (BITUMINOUS ASPHALT CEMENT PAVEMENT):**

Reclaimed (or Recycled) Asphalt Pavement (RAP) may be used in the asphalt mix design. Submit proposed mix design of any asphalt concrete pavement containing RAP. Modify asphalt binder grade as necessary to account for the effect of RAP on viscosity.



A maximum of 15% RAP – Reclaimed (or Recycled) Asphalt Pavement may be used in the asphalt mix design.



**EXHIBIT "B"**  
**Bid Form Submitted by Contractor**  
**for**  
**Santaquin City Street/Roadway Paving**





**Bennett Paving & Construction, Inc.**  
**P.O. Box 1326 Spanish Fork, UT 84660**  
**Ph 801-491-0795 Fax 801-491-1031**

Santaquin City 45 W. 100 S. Santaquin, UT 84655	<b>Contact:</b> Wade
	<b>Phone:</b> 420-3006
	<b>Fax:</b> 754-3526
<b>Project Name:</b> 2015 Overlay	<b>Estimate #</b> 1831
	<b>Date</b> 7/22/2015

**Bennett Paving may withdraw this proposal, unless written acceptance is received from buyer within 15 days of proposal date. NO CONTRACTS WILL BE ENTERED INTO WITHOUT ALL REQUIRED SCR INFORMATION, ie TAX PARCELL ID#'s etc.**

Line	Item	Description	Estimated Qty	Unit	Unit Price	Total Price:
Street Overlay	Paving	Furnish, Deliver, and Pave 2" of asphalt.	314,160	SF	0.77	241,903.20
	Paving	Furnish, Deliver, and Pave 3" of asphalt.	5,500	SF	1.22	6,710.00
Leveling course	Paving	Furnish, Deliver, and Pave various depths of asphalt.	1	Ton	69.00	69.00
Fabric	Miscellaneous	Overlay Fabric	1	SY	1.93	1.93
Includes Traffic Control						

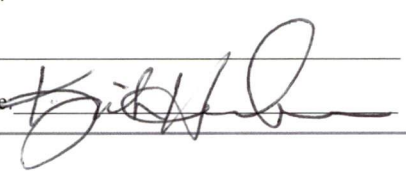
**NOTES:**

**Total Price:**

**\$248,684.13**

- \*Changes in the described work and/or additional work will be handled as a change order. All changes must be approved by the owner and contractor prior to construction.
- \*The price stated is based on Bennett Pavings ability to purchase required materials, any increase in price, including freight and taxes, which Bennett Paving must pay, will be passed onto and paid for by the owner.
- \*Quantities listed are for estimating purposes only. Billing will be based on actual field measurement.
- \*We are not responsible for breaking concrete or damaging landscaping if it is the only access to the job.
- \*We do not guarantee drainage on grade if less than 1%.
- \*Bids include one mobilization. Additional mobilization will be negotiated at time of occurrence.
- \*Bid excludes survey, bonds, permits, fees, testing, striping, herbicide, prime coat, traffic control, saw cutting and construction water unless otherwise noted on the estimate.
- \*Subgrade prepared by others needs to be within .10 of a foot.

**PAYMENT TERMS:** The entire balance of the contract to be paid within 15 days after completion. Any past due amount will be subject to a **FINANCE CHARGE** of 1-1/2 % per month which is an **ANNUAL PERCENTAGE RATE OF 18%**, plus collection costs and all attorney fees.

<b>ACCEPTED:</b> The above prices, specifications and conditions are satisfactory and hereby accepted.  Buyer: _____ Signature: 	<b>CONFIRMED:</b> BENNETT PAVING & CONSTRUCTION, INC.  Authorized Signature: _____ Estimator: Trevor R. Bennett 801-836-3866 trevorbennett@bennettpavinginc.com
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