

**Resolution No. 20-04**

**RESOLUTION OF SOUTH OGDEN CITY APPROVING AN AGREEMENT WITH AAA EXCAVATION FOR THE 40TH STREET DETENTION POND PROJECT, AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AND FINAL PASSAGE.**

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

**WHEREAS**, the City Council finds that in conformance with Utah Code ("UC") § 10-3-717 the governing body of the city may exercise all administrative powers by resolution including, but not limited to regulating the use and operation of municipal property and programs; and,

**WHEREAS**, the City Council finds it necessary to address certain storm water detention needs within the city; and,

**WHEREAS**, the City Council finds that the city staff recommends that the city approve the Agreement with AAA EXCAVATION to fully address those storm water detention needs, specifically the 40th Street Detention Pond project, on behalf of the citizens of the City; and,

**WHEREAS**, the City Council finds that AAA EXCAVATION has the ability to fully address those storm water detention needs, specifically the 40th Street Detention Pond project, on behalf of the citizens of the City; and,

**WHEREAS**, the City Council finds that City now desires to further those ends by approving an Agreement with AAA EXCAVATION to provide such services; and,

**WHEREAS**, the City Council finds that the public convenience and necessity requires the actions contemplated,

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:**

**SECTION II - CONTRACT AUTHORIZED**

That The "Contract Agreement" With AAA EXCAVATION For The 40th Street Detention Pond Project Within The City, Attached Hereto As Attachment "A" And By This Reference Fully Incorporated Herein, Is Hereby Approved And Adopted; And That The City Manager Is Authorized To More Fully Negotiate Any Remaining Details Under The Agreement On Behalf Of The City And Then To Sign, And The City Recorder Authorized To Attest, Any And All Documents, Reasonably Necessary To Effect This Authorization And Approval.

The foregoing Recitals are incorporated herein.

### **SECTION III - PRIOR ORDINANCES AND 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 IV - REPEALER OF CONFLICTING ENACTMENTS**

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

### **SECTION V - SAVINGS CLAUSE**

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

### **SECTION VI - DATE OF EFFECT**

This Resolution shall be effective on the 7<sup>th</sup> day of April, 2020, 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 7<sup>th</sup> day of April, 2020.

### **SOUTH OGDEN CITY**

\_\_\_\_\_  
Russell Porter  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leesa Kapetanov, CMC  
City Recorder

# **ATTACHMENT “A”**

## **Resolution No. 20-04**

Resolution Of South Ogden City Approving An Agreement With  
AAA EXCAVATION For The 40th Street Detention Pond Project, And Providing  
That This Resolution Shall Become Effective Immediately Upon Posting And Final Passage.

07 Apr 20

[Attachment to be provided by Public Works Director]

# CONTRACT AGREEMENT

**THIS AGREEMENT** is by and between **SOUTH OGDEN CITY CORPORATION** (hereinafter called OWNER) and **AAA Excavation, Inc.** (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:

The work consists of constructing 400 l.f. of storm drain pipe; manholes; connections to the existing storm drain; abandoning existing storm drain pipe; detention pond outlet structure; 2000 c.y. of import material for earthen embankment; sprinkler system; sod or hydro-seeding, sprinkling system and controller, 8,500 s.f. of concrete sidewalk and all other related items and appurtenances as directed in the Contract Documents.

## 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:

### 40<sup>th</sup> STREET DETENTION POND PROJECT

## ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Wasatch Civil Consulting Engineering, who is hereinafter called ENGINEER and 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:* All time limits for completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Completion and Final Payment:* The Work specified in the Contract Documents shall be completed within 45 days following the Notice to Proceed.

4.03 *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 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 \$1,000.00 for each day that expires after the time specified in paragraph 4.02 for completion until the Work is accepted.

## 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 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	Mobilization:		L.S.	\$30,145.00	\$30,145.00
2	Furnish & Install Storm Water BMPs and Comply with the Requirements of the Site Storm Water Pollution Prevention Plan (SWPPP):		L.S.	\$10,000.00	\$10,000.00
3	Remove & Dispose of Existing Soil From Future Playground Area. Finished Elevation to be 1-0" Depth From Finished Surface Elevation:	250	C.Y.	\$20.56	\$5,140.00
4	Clearing & Grubbing Including Removal and Disposal of Existing Sod, Sprinklers and Playgrounds:	12,000	S.Y.	\$3.20	\$38,400.00
Alt4	Clearing & Grubbing Including Cutting, Removal and Salvage of Existing Sod, Removal and Disposal of Existing Sprinklers and Playgrounds:	12,000	S.Y.	\$8.33	\$99,960.00
5	Furnish & Install Clean Fill Material for Embankment (Material Must Comply with USCS Classification SM or SC):	2,600	C.Y.	\$32.30	\$83,980.00
6	Finished Grading:	11,700	S.Y.	\$1.90	\$22,230.00
7	Furnish & Install 6' Diameter Storm Drain Manhole, Ring and Cover on an Existing 24" Diameter Storm Drain Pipe, 5' to 6' Depth (in Landscaped Area):		Each	\$3,000.00	\$3,000.00
8	Furnish & Install 6' Diameter Storm Drain Manhole with Snout, Ring and Cover on an Existing 24" Diameter Storm Drain Pipe, 7' to 8' Depth (in Landscaped Area):		Each	\$3,500.00	\$3,500.00
9	Furnish & Install 6' Diameter Storm Drain Manhole, Ring, Cover and Concrete Collar on an Existing 24" Diameter Storm Drain Pipe, 6' to 7' Depth (in 39 <sup>th</sup> Street):		Each	\$3,700.00	\$3,700.00
10	Furnish & Install Outlet Control Structure:				
11	Abandon Existing Storm Drain Pipe in Place with Concrete Plugs:		L.S.	\$20,000.00	\$20,000.00
12	Furnish & Install 24" Diameter RCP Storm Drain Pipe:		L.S.	\$1,000.00	\$1,000.00
13	Furnish & Install 18" Diameter RCP Storm Drain Pipe:	355	L.F.	\$66.50	\$23,607.50
14	Furnish & Install 18" Diameter Flared End Section with Grate and Concrete Apron:	35	L.F.	\$68.50	\$2,397.50
15	Remove & Dispose of Existing Concrete Flatwork/ Sidewalk (Thickness May Vary):		L.S.	\$1,500.00	\$1,500.00
		300	S.F.	\$5.00	\$1,500.00

16	Furnish & Install 6" Thick Concrete Flatwork/ Sidewalk:	7,100	S.F.	\$8.00	\$56,800.00
17	Furnish & Install 4" Thick Concrete Flatwork/ Sidewalk	1,200	S.F.	\$7.00	\$8,400.00
18	Furnish & Install Pedestrian Access Ramp No. 1:		Each	\$2,000.00	\$2,000.00
19	Furnish & Install Pedestrian Access Ramp No. 2:		Each	\$2,000.00	\$2,000.00
20	Furnish & Install 8" x 18" Reinforced Curb Wall:	370	L.F.	\$35.00	\$12,950.00
21	Furnish & Install Trench Backfill. Material Must Comply with APWA Trench Barrow Backfill A-1-a:	700	Ton	\$20.00	\$14,000.00
22	Furnish & Install Asphalt Trench Repair (3" H..M.A. / 10" U.T.B.C.):	120	S.Y.	\$35.00	\$4,200.00
23	Furnish & Install 2.5" Diameter Schedule 40 PVC Sprinkler Pipe:	1,045	L.F.	\$3.18	\$3,323.10
24	Furnish & Install 2.0" Diameter Schedule 40 PVC Sprinkler Pipe:	350	L.F.	\$2.90	\$1,015.00
25	Furnish & Install 1.5" Diameter Schedule 40 PVC Sprinkler Pipe:	440	L.F.	\$2.65	\$1,166.00
26	Furnish & Install 1.25" Diameter Schedule 40 PVC Sprinkler Pipe:	770	L.F.	\$2.40	\$1,848.00
27	Furnish & Install 1.0" Diameter 125 PSI Poly Sprinkler Pipe:	75	L.F.	\$2.10	\$157.50
28	Furnish & Install Rainbird 6504 Rotor with Nozzle:	39	Each	\$106.00	\$4,134.00
29	Furnish & Install Rainbird 5500 Rotor with Nozzles:	4	Each	\$106.00	\$424.00
30	Furnish & Install Sprinkler Valve and Shutoff Valve Box A with Multi-Station Decoder:	3	Each	\$636.00	\$1,908.00
31	Furnish & Install Sprinkler Valve and Shutoff Valve Box B with Single Station Decoder:		Each	\$636.00	\$636.00
32	Furnish & Install Sprinkler Valve and Shutoff Valve Box C with Multi-Station Controller:		Each	\$636.00	\$636.00
33	Furnish & Install Quick Coupler with Box:	2	Each	\$292.00	\$584.00
34	Furnish & Install Manual Drain Valve with Box:	9	Each	\$236.00	\$2,124.00
35	Furnish & Install Air Release Valve with Box:		Each	\$331.00	\$331.00
36	Furnish & Install 2.5" Gate Valve with Box:	3	Each	\$477.00	\$1,431.00
37	Furnish & Install a Hunter ACC-99D Sprinkler Controller with Wireless Remote Control:		L.S.	\$2,120.00	\$2,120.00
38	Furnish & Install 14/2 Jacketed, Solid Core, Twisted, Color Coded Control Cable:	1,050	L.F.	\$2.10	\$2,205.00
39	Furnish & Install 1.5" Diameter PVC Conduit with Pull Boxes on Each End:		L.S.	\$1,060.00	\$1,060.00

40	Furnish & Install Top Soil (6" Minimum Thickness):	3,500	Ton	\$58.90	\$206,150.00
41	Furnish & Install Landscape Sod:	9,900	S.Y.	\$6.68	\$66,132.00
Alt41	Furnish & Install Hydro Seeding:	9,900	S.Y.	\$3.34	\$33,066.00

TOTAL OF ALL UNIT PRICES (Excluding Alternate Items) **SIX HUNDRED FORTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-FOUR DOLLARS AND 60/100 (\$647,834.60).**

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 9.08 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:* 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:* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 15<sup>th</sup> 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 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 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, in accordance with paragraph 14.02 of the General Conditions:

A. 95% of Work completed (with the balance being retained). If the Work has been 50% 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 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, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.

6.03 *Final Payment:* 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 bear interest at the rate of 1% per annum.

**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 has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
- E. 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 (surface, subsurface, and Underground Facilities) 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. 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.
- J. 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. Performance Bond;
  3. Payment Bond;
  4. Bid Bonds;
  5. Engineering General Conditions noted as EJCDC No. 1910-8;
  6. Supplementary Conditions;
  7. Specifications as listed in the table of contents of the Project Manual;
  8. Bid Form;
  9. Drawings as listed in the table of contents of the Project Manual;
  10. Addenda Number (N/A);
  11. Exhibits this Agreements;
    1. Notice to Proceed;
    2. CONTRACTOR's Bid;
    3. Documentation submitted by the CONTRACTOR prior to the 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:
    - Written Amendments;
    - Work Change Directives;
    - 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 3.05 of the General Conditions.

**ARTICLE 10 - MISCELLANEOUS**

10.01 *Terms:* Terms used in this Agreement will have the meanings defined by Engineers Joint Contract Documents Committee STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT (EJCDC No. 1910-8 ).

10.02 *Assignment of Contract:* 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*: 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*: 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.

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 \_\_\_\_\_ 2020, (which is the Effective Date of the Agreement).

**OWNER:**

**CONTRACTOR:**

SOUTH OGDEN CITY CORPORATION

AAA EXCAVATION, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Designated Representative:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_