

**Resolution No. 21-08**

**A RESOLUTION APPROVING AN AGREEMENT WITH  
ORMOND CONSTRUCTION FOR THE PORTER AVENUE  
STORM DRAIN PROJECT; 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 storm drain on Porter Avenue needs to be replaced/repaired in support of ongoing city operations; and,

**WHEREAS**, the City Council finds that to ensure the effective operation and utilization of these facilities and resources an agreement with a qualified construction service provider should be in place; and,

**WHEREAS**, the City Council finds that the deemed necessary and required solicitation of qualified service providers has been completed; and,

**WHEREAS**, the City Council finds that Ormond Construction is in the best position to perform the Porter Avenue Storm Drain project contemplated herein; and,

**WHEREAS**, the City Council finds it is in the best interest of the City and its residents to sign such a construction supervision agreement with Ormond Construction.

**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 Ormond Construction Inc. For The Porter Avenue Storm Drain Project 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 16<sup>th</sup> day of March, 2021, 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 16<sup>th</sup> day of March, 2021.

**SOUTH OGDEN CITY**

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

ATTEST:

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

# **ATTACHMENT "A"**

## **Resolution No. 20-26**

A Resolution Approving An Agreement With Ormond Construction For Porter Avenue Storm Drain Project; Authorizing The City Manager To Sign Any And All Necessary Documents; And, Providing For An Effective Date

16 Mar 21

# CONTRACT AGREEMENT

**THIS AGREEMENT** is by and between SOUTH OGDEN CITY CORPORATION (hereinafter called OWNER) and ORMOND 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:

The work consists of furnishing and installing 800 Lineal feet of 18” and 15” RCP Storm Drain within an existing city street. The work also includes: the installation precast manholes, inlet box grates, loops for water and gas services; import trench backfill; asphalt trench repair; and all other related appurtenance and associated work as indicated in the Contract Document.

## 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:

### Porter Avenue Storm Drain 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 will be completed within **45** days following 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 \$200.00 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	1	L.S.	\$30,100.00	\$30,100.00
2.	Traffic Control and Barricades	1	L.S.	\$10,530.00	\$10,530.00
3.	15-inch RCP Storm Drain	110	L.F.	\$138.03	\$15,183.30
4.	18-inch RCP Storm Drain	700	L.F.	\$123.77	\$86,639.00
5.	5' Diameter Manholes (4'-6' Depth)	1	Each	\$4,117.60	\$4,117.60
6.	5' Diameter Manholes (6'-8' Depth)	2	Each	\$6,105.23	\$12,210.46
7.	Install New Catch Basin	3	Each	\$3,874.35	\$11,6233.05
8.	Remove and Replace Existing Inlet Box Frame and Grate	2	Each	\$2,472.37	\$4,944.74
9.	Remove Existing Catch Basin. Construct Combo Box	1	Each	\$6,855.12	\$6,855.12
10.	Remove Existing Cleanout Box	1	Each	\$1,100.00	\$1,100.00
11.	Loop Existing Gas Service Lateral	6	Each	\$50.00	\$300.00
12.	Loop Existing Culinary Water Service Lateral	7	Each	\$200.00	\$1,400.00
13.	Reroute Existing 2" PVC Sump Pump Line to Existing Cleanout Box	1	Each	\$1,900.00	\$1,900.00
14.	Abandon Existing Concrete Curb and Gutter	8	Each	\$625.00	\$5,000.00
15.	Remove and Replace Existing Concrete Curb and Gutter	170	L.F.	\$56.00	\$9,520.00
16.	Remove and Replace Pedestrian Access Ramp	2	Each	\$2,000.00	\$4,000.00
17.	Haul-off and Dispose of Excavated Material	600	C.Y.	\$19.50	\$11,700.00
18.	Imported Granular Backfill Borrow	1,100	Tons	\$21.00	\$23,100.00
19.	Asphalt Trench Repair (3" HMA/8" UTBC)	700	S.Y.	\$34.27	\$23,989.00
20.	Landscaping and Sprinkler Repair	400	S.F.	\$5.50	\$2,200.00

21.	Install Storm Water BMPs and comply with the Requirements of the Site Storm Water Pollution Prevention Plan	1	L.S.	\$5,500.00	\$5,500.00
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TOTAL OF ALL UNIT Two Hundred Seventy-One Thousand Nine Hundred Twelve Dollars and Twenty-Seven Cents (\$271,912.27).

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 15th 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 Bond;
5. General Conditions;
6. Supplementary Conditions;
7. Specifications as listed in the table of contents of the Project Manual;
8. Drawings as listed in the table of contents of the Project Manual;
9. Addenda No.;
10. Exhibits this 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).

- 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 indicated in the General Conditions.

10.02 *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.

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 \_\_\_\_\_, 2021, (which is the Effective Date of the Agreement).

**OWNER:**

**CONTRACTOR:**

SOUTH OGDEN CITY CORPORATION

ORMOND CONSTRUCTION, 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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_