

Resolution No. 19-46

RESOLUTION OF SOUTH OGDEN CITY APPROVING AN AGREEMENT WITH POTABLE DIVERS INC. FOR BURCH CREEK BURCH CREEK WATER TANK CLEANING AND INSPECTION, 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 Burch Creek water tank Cleaning and Inspection needs within the city; and,

WHEREAS, the City Council finds that the city staff recommends that the city adopt the contract with Potable Divers Inc. for the Burch Creek water tank Cleaning and Inspection; and,

WHEREAS, the City Council finds that Potable Divers Inc. has the professional ability to provide for these services to meet the city's needs; and,

WHEREAS, the City Council finds that City now desires to further those ends by contracting with, Potable Divers Inc. 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**" For The Burch Creek Water Tank Cleaning And Inspection, 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 6th day of August, 2019, 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 6th day of August, 2019.**

SOUTH OGDEN CITY

Russell Porter
Mayor

ATTEST:

Leesa Kapetanov, CMC
City Recorder

ATTACHMENT “A”

Resolution No. 19-46

Resolution Of South Ogden City Approving An Agreement With Potable Divers Inc. For Burch Creek Burch Creek Water Tank Cleaning And Inspection, And Providing That This Resolution Shall Become Effective Immediately Upon Posting And Final Passage.

06 Aug 19

CONTRACT AGREEMENT

THIS AGREEMENT is by and between **SOUTH OGDEN CITY CORPORATION** (hereinafter called OWNER) And **POTABLE DIVERS INC.** (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1- WORK

1.0 I CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

DESCRIPTION OF WORK: The work consists of contractor providing the labor, materials and equipment to clean and inspect Burch Creek Tanks.

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:

Burch Creek Tank Cleaning

ARTICLE 3- CONTRACT TIMES

3.01 *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.

3.02 *Dates for Completion and Final Payment:* The Work will be completed within **60** working days following Notice to Proceed.

3.03 *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 3.02 above, plus any extensions thereof allowed. 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 3.02 for Completion until the Work is accepted.

ARTICLE 4- CONTRACT PRICE

4.01 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.

UNIT PRICE WORK

	<u>No.</u>	<u>Item</u>	<u>Quantity</u>	<u>Unit</u>
	<u>Price</u>	<u>Amount</u>		
1		Clean and Inspect Tank 1	1,000,000 Sq. ft	\$1,100.00
2		Clean and Inspect Tank 2	1,000,000	\$1,100.00
<u>TOTAL OF ALL UNIT PRICES</u>				<u>\$2,200.00</u>

ARTICLE 5- PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments:* CONTRACTOR shall submit Applications for Payment to OWNER no more than one time per each month.

5.02 *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 5.02(1)(A) and 5.02(1)(B). All such payments will be measured by the schedule of values indicated:

I. There will be no progress payments for this project.

5.03 *Final Payment:* Upon final completion and acceptance of the Work, OWNER shall pay the Contract Price.

ARTICLE 6- INTEREST

6.01 All moneys not paid when due shall bear interest at the rate of 1% per annum.

ARTICLE 7- CONTRACTOR'S REPRESENTATIONS

7.01 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 or Solicitation 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 obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions 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. the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8- CONTRACT DOCUMENTS

8.01 Contents:

- A. The Contract Documents consist of the following:
 - 1. This Agreement;
 - 2. Performance Bond;
 - 3. Payment Bond;
 - 4. Addendum;
 - 5. Exhibits these Agreements;
 - 1. Notice to Proceed;
 - 2. CONTRACTOR's Bid;
 - 3. Documentation submitted by CONTRACTOR prior to Notice of Award;

ARTICLE 9- MISCELLANEOUS

9.02 *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.

9.03 *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.

9.04 *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.

9.05 *Termination Due To Non-Appropriation:* Owner may terminate this Agreement if any of the following events shall have occurred and Contractor has received, not less than 30 days prior to the end of Owner's then current fiscal year, a written opinion from Owner's counsel verifying the occurrence of these events:

- a) If funds are not budgeted and appropriated in any fiscal year for payments due under this Agreement for the succeeding fiscal year, or for acquiring services, equipment or functions, which in whole or in part are essentially the same as those being obtained, this Agreement shall not obligate the Owner as to such succeeding fiscal year and shall become null and void except as to the payments herein agreed upon for which funds will have been appropriated and budgeted, and no right of action or damage shall accrue to the benefit of Contractor, its successors and assigns, for any further payments;
- b) If the provisions of Section (a) are utilized by Owner, Owner agrees to immediately notify the Contractor or its assignee of this Agreement that funds were not budgeted and appropriated, and to peaceably surrender possession of the Equipment to Contractor or its assignee.
- c) Owner made all payments due during the fiscal period immediately preceding the fiscal period for which sufficient funds were not appropriated.

Any early termination due to non-appropriation must be at the end of Owners then-current fiscal year.

9.06 *Voluntary Termination* Either party may, without cause, and upon thirty (30) days written notice to the other party, terminate the agreement. The Owner shall pay the Contractor for all services rendered prior to the termination date.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpalt 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 _____ (which is the Effective Date of the Agreement).

OWNER:

SOUTH OGDEN CITY CORPORATION

By: _____

CONTRACTOR:

POTABLE DIVERS INC.

By: _____

Attest: _____

Address for giving notices:

Attest: _____

Address for giving notices:

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

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

Name: David Harvey

Title: Operations Manager

Address: PO Box 474
Vernal, UT 84078 Toll Free

Phone: (866)-789-DIVE (602) 920-9438



The following is our firm quote and specifies our conditions of services.

Our quote is based on the information you provided and the following assumptions:

Reservoir	Type	Dia or LxW	Hgt. Feet	Max. Gallons	Surface area (S.F)		Price for Cleaning and Inspection
Tan.le 1	Concrete	90 FT	24 FT	1,000,000	6358		\$1,100
Tank2	Concrete	90 FT	24 FT	1,000,000	6358		\$1,100
Total							\$2,200

1. Cleaning service includes removal of all sediment up to one inch deep. Calculated as an average depth over the reservoir floor. Additional sediment is removed at \$35 per cubic yard
2. Repairs are done on the basis of \$190 per hour plus \$20 per tube of epoxy. Repairs are done only with your authorization and are guaranteed.
3. Filtration is charged on a per filter bag basis at \$50 each. Dechlorination is a flat charge of \$40 per tank if applicable. These items by request only
4. This quote is valid on the tank(s) listed above for 90 days. Once quote is signed the work shall be accomplished at a mutually accepted date within one year.
5. We guarantee your satisfaction if the signee of the quote is not satisfied, we will return until you are.
6. All cleaning and inspections are done with high quality color camera and sound, recorded on DVD, vcd, or svcd, along with full computer generated reports with digital photos.
7. POI complies with all AWWA and OSHA standards and requirements. Insured, Licensed, and Bonded .

Proposal Acceptance _____

Signature Required _____

PO# _____