

Contract Review and Approval

Contract Title/Description: CARVEZ ~~ENERGY SERVICES~~ ENERGY SERVICES - Settlement Agreement.

Contractor/Vendor: CARVEZ ~~ENERGY SERVICES~~ ENERGY SERVICES
Contract Begin Date: 3/14/2014
Contract End Date: 3/14/2014
Account Number: _____
Available Budget: \$33,000
Contract Price: \$33,000

Approved as to:

Content: [Signature] 3/14/2014
Owner / Project Manager (Date)

Form: SEE ATTACHED
City Attorney / Assistant City Attorney (Date)

Budget: [Signature] 3/27/14
Finance Officer (Date)

Bid Summary Included: Yes N/A

Service Group Authorization:

Department Director: [Signature] 3/14/2014
Name/Signature (Date)

ACM: SEE ATTACHED
Name/Signature (Date)

Original Received:

City Recorder: [Signature] 3-26-2014
Name/Signature (Date)

Contract Number: 2014-0026



SETTLEMENT AGREEMENT

The City of South Jordan (“SJC”), on the one hand, and Carver Energy Services, Inc. (“Carver Energy”) and Carver Electric, LLC (collectively, with Carver Energy, “Carver”) (collectively, with SJC, the “Parties”), on the other, hereby enter into this Settlement Agreement (the “Agreement”) as of the 14th day of ~~February~~^{March}, 2014 (the “Effective Date”), for the purpose of settling and resolving certain claims, controversies, and disputes between them on the terms and conditions and for consideration set for below.

1. Intent of the Parties to Settle All Claims. There is a dispute (the “Dispute”) between the Parties to this Agreement arising from contracts entered into by and between the Parties. The contracts at issue include:

- 1) An Agreement for Lighting System Upgrade Between SJC and Carver Energy entered into by the Parties as of June 28, 2012;
- 2) Contract for Work related to “South Jordan Fire Station #61” entered into by the Parties as of May 31, 2012;
- 3) Contract for Work related to “Mulligans Driving Range and Mini Golf” entered into by the Parties as of May 31, 2012;
- 4) Contract for Work related to “South Jordan Community Center” entered into by the Parties as of May 31, 2012;
- 5) Contract for Work related to “South Jordan Fitness and Aquatic Center” entered into by the Parties as of May 31, 2012;
- 6) Contract for Work related to “The City of South Jordan City Hall entered into by the Parties as of May 31, 2012;
- 7) Contract for Work related to “north side of mini golf area to upgrade to match the south side . . .” entered into by the Parties as of May 23, 2012;
- 8) Contract for Work related to the “[r]epair and upgrade the low voltage lighting system on the south side of the mini golf area of Mulligans” entered into by the Parties as of April 10, 2012.
- 9) Assignment of Incentive to a Third Party (Exhibit B of the FinAnswer Express Incentive Agreement) for energy efficiency incentives related to the Mulligans Driving Range project, assigning Carver Electric the City’s incentive rights as of March 21, 2012.
- 10) Assignment of Incentive to a Third Party (Exhibit B of the FinAnswer Express Incentive Agreement) for energy efficiency incentives related to the

South Jordan Rec. Ph. 2 project, assigning Carver Electric the City's incentive rights as of February 20, 2012.

Without waiving or conceding their respective positions in the Dispute, it is the intent and purpose of the Parties to this Agreement to fully and completely settle, compromise, and resolve all claims and controversies between them, known and unknown, arising out of or in any way referring or relating to the Dispute.

2. Payment and Consideration by the SJC. As final payment for work performed on the contracts underlying the Dispute and as part of this Agreement, SJC shall pay to Carver, by and through their counsel, in current U.S. funds, the sum of thirty-three thousand dollars and no cent (\$33,000.00), without accruing interest, payment to be made within ten (10) days of the execution of this Agreement.

3. Mutual General Release of All Claims. As part of this Agreement, SJC and Carver, for and on behalf of themselves and their respective employees, agents, representatives, indemnitors, insurers, successors, and assigns, hereby release and forever discharge one another, together with their employees, agents, representatives, indemnitors, insurers, successors, and assigns, from any and all claims, demands, liabilities, damages, causes of action, costs and expenses, including attorneys' fees, arising out of or in any way related to the Dispute and the subject matter of this Agreement. The foregoing release specifically excludes release from the terms and obligations of this Agreement.

4. Contractual Obligations Satisfied. Except as provided in Paragraph 5 of this Agreement, the Parties agree that by entering into this Agreement, each and every obligation as described in the contracts identified in Paragraph 1 of this Agreement remain in place with full force and effect, and that each of those obligations have been fully performed in good faith and satisfactorily.

5. Waiver of Warranty and Payment. To the extent that there remains any warranty associated with or otherwise related to work performed by Carver, specifically as referenced in Item 3 in the June 28, 2012 agreement, for the benefit of and at the direction of SJC, by executing this Agreement, SJC hereby waives any such warranty as against Carver and agrees to release or otherwise hold harmless Carver in relation and regards to any such warranty. Carver hereby waives any obligation for payment by the City associated with the aforementioned warranty of the work performed by Carver.

6. Releases Valid Even with New or Different Facts or agreements. The Parties acknowledge they may discover facts, including agreements, which are additional to or different from those which they now know or believe to be true regarding the subject matter of this Agreement. Nonetheless, except as otherwise provided herein, the Parties intend to fully and finally compromise and settle all claims, counterclaims and defenses which exist or may exist among Plaintiffs and Defendants based upon any act or inaction in any way associated with, arising from or related to the factual or legal basis of the Litigation. To effectuate the Parties' intentions, the releases given herein shall remain

full and complete releases, notwithstanding the discovery of any additional or different facts or agreements by any party.

7. No Ineligibility Determination. The Parties agree that SJC will not at any time deem or otherwise view any of the events or what has transpired regarding the Dispute as a basis for finding or determining Carver ineligible as may otherwise be allowed under Section 3-14 of the South Jordan City Purchasing Policy, Regulations Governing Competitive Bidding, effective as of August 5, 2008. Nothing herein shall be interpreted to prohibit SJC from deeming Carver ineligible for competitive bidding under the SJC applicable purchasing policy for events or disputes not relating to the Dispute.

8. Attorneys' Fees. In the event of any legal action between the Parties hereto arising out of or related to the enforcement of the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

9. Integration. Except as expressly stated herein, this Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and integrates all prior conversations, discussions, or undertakings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the Parties hereto.

10. Counterparts. This document may be executed in one or more counterparts, which together shall constitute one and the same document.

11. Amendment. This Agreement may not be modified except by an instrument in writing signed by the Parties hereto.

12. Additional Acts. The Parties shall do such further acts and things and shall execute and deliver such additional documents and instruments as may be reasonably necessary or reasonably requested by a party or its counsel to obtain approvals or other benefits described in this Agreement.

13. Authorization. Each individual executing this Agreement does thereby represent and warrant to the other signers that the individual has been duly authorized to execute and deliver this Agreement in the capacity and for the party specified.

14. Mutual Participation in Document Preparation. Each party has participated materially in the negotiation and preparation of this Agreement and any related items; in the event a dispute concerning the interpretation of any provision of this Agreement or any related item, the rule of construction to the effect that certain ambiguities are to be construed against the party drafting the document will not apply.

15. No Third-Party Beneficiary Interests. Except as expressly provided herein, nothing contained in this Agreement is intended to benefit any person or entity other than the Parties to this Agreement; and no representation or warranty is intended for the benefit of, or to be relied upon by, any person or entity which is not a party to this Agreement.

WHEREFORE, the Parties have executed the foregoing to be effective as of the Effective Date.

Dated ~~February~~ ^{March} 14, 2014

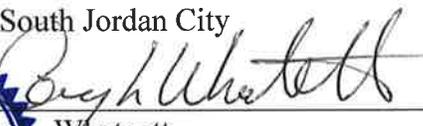
Approved as to form:


Assistant City Attorney

Dated February 14, 2014
~~February~~ ^{March}



By: South Jordan City


Gary Whatcott
Interim City Manager, South Jordan City

By: Carver Energy Services, Inc.

Douglas Carver
General Manager

Dated February 14, 2014
~~February~~ ^{March}

By: Carver Electric, LLC

Douglas Carver
General Manager

WHEREFORE, the Parties have executed the foregoing to be effective as of the Effective Date.

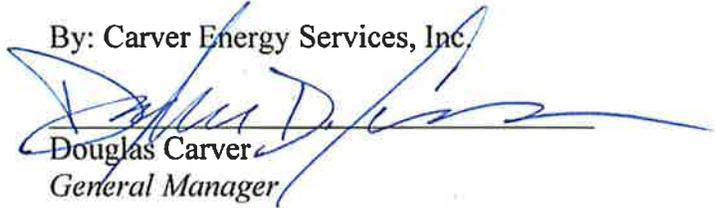
Dated February ___, 2014

By: South Jordan City

Gary L. Whatcott
Interim City Manager, South Jordan City

~~Dated February ___, 2014~~
March 13, 2014

By: Carver Energy Services, Inc.



Douglas Carver
General Manager

Dated ~~February~~ ___, 2014

By: Carver Electric, LLC

March 13, 2014



Douglas Carver
General Manager