

# **AGREEMENT**

## **BETWEEN OWNER AND CONTRACTOR**

**THIS AGREEMENT** is by and between the **City of College Place, Washington** (hereinafter called Owner) and **Culbert Construction, Inc.** (hereinafter called Contractor) for the **4Bikes Project**.

The Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **1. WORK**

The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: The work includes improvement of 4th Street from Academy Way to College Avenue, including street lights, cycle track extension, approximately 1,000 linear feet of curb and gutter, approximately 1,100 square yards of sidewalk replacement, and other work.

### **2. (RESERVED)**

### **3. ENGINEER**

- 3.01 The Project has been designed by Anderson Perry & Associates, Inc. (hereinafter called Engineer) and who is to act as the Owner's representative and have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. The Engineer's address is 214 East Birch Street, P.O. Box 1687, Walla Walla, Washington 99362; telephone, (509) 529-9260 and fax (509) 529-8102.

### **4. CONTRACT TIMES**

#### 4.01 Time of the Essence

- A. All time limits for Milestones (if any), Substantial Completion, Physical Completion, and Completion and readiness for final payment and final acceptance as stated in the Contract Documents are of the essence of the Contract.

#### 4.02 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed as outlined in the Contract Documents.

#### 4.03 Liquidated Damages

- A. The Contractor and Owner recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss and other adverse consequences described in Section 1-08.9 of the Standard Specifications if the Work is not completed within the time(s) specified plus any extensions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay the Owner in accordance with

the formula in Section 1-08.9 of the Standard Specifications for each day that expires after the time established for Physical Completion until the Work is physically complete.

- B. It is further agreed that, in case the Work called for under the Contract is not completed in all parts and requirements within the Contract Time specified in the Contract, the Owner, as an alternative to assessing liquidated damages, shall have the option to increase the Contract Time or not, as the Owner decides will best serve its interest. If the Owner decides to increase said Contract Time, the Owner shall further have the right to charge the Contractor, his/her heirs, assigns, or sureties, and to deduct from the final payment for the Work, all or any part, as the Owner may deem proper, of the actual cost of engineering, lost revenue, interest cost, inspection, superintendence, Owner's direct cost, and other overhead expenses that are directly chargeable to the Contract and that accrue during the period of such extension, except that the cost of final surveys and preparation of the final estimate shall not be included in such charges. Permitting the Contractor to continue and finish the Work or any part thereof after the Contract Time or adjusted Contract Time has expired shall in no way be construed as a waiver on the part of the Owner or any of his/her rights under the Contract.

## **5. CONTRACT PRICE**

- 5.01 The Owner shall pay the Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amount(s) contained in the Contractor's Bid Form, which shall become an attachment to the Contract Documents.

## **6. PAYMENT PROCEDURES**

### **6.01 Submittal and Processing of Payments**

- A. The Contractor shall submit Applications for Payment. Applications for Payment will be processed by the Engineer and forwarded to the Owner.

### **6.02 Progress Payments; Retainage**

- A. The Owner shall make progress payments on account of the Contract Price on the basis of the Contractor's Applications for Payment as outlined in Section 1-09 of the Standard Specifications.

### **6.03 Final Payment**

- A. Upon completion and final acceptance of the Work in accordance with the Standard Specifications, the Owner shall pay the remainder of the Contract Price, minus retainage. Release of retainage shall be in conformance with Section 1-09 of the Standard Specifications.

## **7. (RESERVED)**

## 8. CONTRACTOR'S REPRESENTATIONS

- 8.01 To induce the Owner to enter into this Agreement, the Contractor makes the following representations:
- A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. The Contractor has become familiar with the site and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. The 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. The 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) that have been identified in the Special Provisions.
  - E. The 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 that may affect cost, progress, or performance of the Work, or that relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the 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. The 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. The 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 Contractor has correlated the information known to the 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. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the 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.

## 9. CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
1. Bidding Requirements
    - a. Call for Bids
    - b. Instructions to Bidders
    - c. Bidders Packet (Bound Separately)
  2. Contract Forms
    - a. Notice of Award
    - b. Agreement
    - c. Performance Bond
    - d. Payment Bond
    - e. Certificate of Insurance
    - f. Notice to Proceed
    - g. Application for Payment
    - h. Other forms included in the Contract Documents
  3. Conditions of the Contract
    - a. Reference to the Standard Specifications
    - b. Special Provisions
    - c. Wage Requirements
  4. Appendices
  5. Drawings (consisting of sheets numbered 1 through 26, inclusive) (bound separately)
  6. The following that may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Written Amendments
    - b. Change Order(s)
- B. The documents listed in Paragraph 9.01.A are a part of the Contract Documents that are attached (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in Paragraph 9.01.A.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Standard Specifications, Amendments, or Special Provisions.

## 10. MISCELLANEOUS

### 10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the Contract Documents.

### 10.02 Successors and Assigns

- A. The 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.

### 10.03 Severability

- A. 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 the 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.

### 10.04 Waiver

- A. The terms of this Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, except by written instrument. Such waiver, alteration, modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if it is signed by all parties to this Contract. The failure of the Owner to enforce any provision of this Contract shall not constitute a waiver by the Owner of that or any other provision.

### 10.05 Governing Law and Venue

- A. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. Any litigation between the Owner and the Contractor arising out of or related to this Contract shall be brought and maintained solely and exclusively in the District or Superior Court of Walla Walla County, Washington. Provided, if any litigation arising under this Contract must be brought in a federal forum, it shall be brought and maintained solely and exclusively in the U.S. District Court for the Eastern District of Washington in Richland, Washington. The Contractor hereby consents to the personal jurisdiction of all courts within the State of Washington. Should any litigation be brought to enforce the terms of this Contract, the prevailing party shall be entitled to reasonable attorney fees, costs, and disbursements at trial and upon appeal. Should any dispute over the terms and conditions of this Contract result in mediation or arbitration, any attorney's fees and costs incurred in such mediation or arbitration shall be paid by the party incurring such fees and costs.

IN WITNESS WHEREOF, the Owner and Contractor have signed this Agreement. One counterpart each has been delivered to the Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed, initialed, or identified by the Owner and Contractor, or identified by the Engineer on their behalf.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Agreement).

**OWNER: City of College Place, Washington**

**CONTRACTOR: Culbert Construction, Inc.**

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

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

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

License No. \_\_\_\_\_  
(Where applicable)

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

Designated Representative:

Designated Representative:

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

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

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_