

# CONTRACT DOCUMENTS – 4<sup>th</sup> AMENDMENT

AND

SPECIFICATIONS

FOR

## *Ogden Valley Wayfinding Phase 1 (2021)*

IN

THE UNINCORPORATED AREA OF WEBER COUNTY

KNOWN AS “OGDEN VALLEY”

Prepared June 5, 2024

# AGREEMENT – 4<sup>th</sup> AMENDMENT

## PART 1 GENERAL

### 1.1 CONTRACTOR

A. Name: Graphic House Inc

B. Address: 8101 International Dr., Wausau, WI, 54401

C. Telephone number: (715)842-0402

D. E-Mail address: lea@graphichouseinc.com

### 1.2 COUNTY

A. Weber County, a body corporate and politic of the State of Utah, 2380 Washington Blvd, Ogden, UT 84401, hereinafter referred to as “COUNTY.”

### 1.3 CONSTRUCTION CONTRACT

A. The Construction Contract is known as: ***OGDEN VALLEY WAYFINDING PHASE 1 (2019)***

### 1.4 ENGINEER

A. Gary Myers is the COUNTY’s representative and agent for this Construction Contract who has the rights, authority and duties assigned to the Engineer in the Contract Documents and Specifications for Ogden Valley Wayfinding Phase 1 (2021) in the Unincorporated Area of Weber County Known as “Ogden Valley” (“Contract Documents”).

### 1.5 AGREEMENT PERFORMANCE

A. The Contractor shall perform everything required to be performed, shall provide and furnish all labor, tools and equipment, and shall furnish and deliver all materials not specifically stated as being furnished by the COUNTY, to complete all the work necessary to complete the Construction Contract, as amended herein, in Weber County, State of Utah, in the best and most workmanlike manner, and in strict conformity with the provisions of this amended contract, and the amended plans and specifications. The amended plans and specifications, provided herein as Exhibit A, and the proposal are hereby made a part of the agreement as fully and to the same effect as if the same had been set forth at length in the body of this amended agreement.

B. It is agreed that the status of the Contactor under this agreement is that of Independent Contractor rather than that of an employee of the COUNTY. Accordingly, the Contractor, in performance of his/her obligations hereunder, is independent and free from control of the COUNTY in all that pertains to the execution of the work and shall perform the work according to the Contractor’s own methods without being subject to the rule, control or direction of the

COUNTY or its representatives, save and except as to the results obtained. The finished work and the materials furnished must, however, conform strictly to this amended contract, the proposal, and the amended plans and specifications aforesaid, and are subject to the final approval of the COUNTY and its authorized representatives, who may exert such direction and control thereof as may be necessary to achieve that conformity. All provisions in the specifications with respect to the direction and control of the work shall be construed so as to make effective this provision.

C. Furnishing of W-9. Payment under this Agreement is contingent upon Contractor furnishing COUNTY with a signed and completed W-9 IRS tax form. Such form shall be attached hereto and incorporated herein. Contractor shall cooperate with COUNTY in furnishing any additional information COUNTY may need to comply with rules and regulations of the Internal Revenue Service.

## **PART 2 TIME AND MONEY CONSIDERATIONS**

### **2.1 CONTRACT PRICE**

A. The contract price includes the cost of the work specified in the Contract Documents, as amended herein, plus the cost of all bonds, insurance, permits, fees, and all charges, expenses or assessments of whatever kind or character.

B. Based upon the herein amended work, the contract price awarded is:

**Two Hundred Seventy Thousand and Six Hundred Eighty Eight dollars and Zero cents.  
(\$270,688.00).**

### **2.2 CONTRACT TIME**

A. Hardware and installation materials and components for Pedestrian/Bicycle signage (Phase 1) shall be delivered to County by July 22, 2024. This shall include all components of the base/footer connection, as depicted on **Page 23 of Attachment C** of the original bid document packet.

B. All Work required for Pedestrian Bicycle signage (Phase 1) shall be delivered to County by July 22, 2024.

C. The indemnification provisions of this agreement, and any other provisions related to the liability of the parties, shall continue in force until all applicable statutes of limitations have run and until all legal proceedings arising out of this agreement have reached final resolution.

### **2.3 PUNCH LIST TIME**

A. The work will be complete and ready for final payment within 15 calendar days after the date Contractor receives Planning's Final Inspection Punch List unless exemptions of specific items are granted by Planning in writing or an exception has been specified in the Contract Documents.

B. Permitting the Contractor to continue and finish the work or any part of the work after the time fixed for its completion, or after the date to which the time for completion may have been

extended, whether or not a new completion date is established, shall in no way operate as a waiver on the part of the COUNTY of any of COUNTY's rights under this Agreement.

## **2.4 LIQUIDATED DAMAGES**

A. For the purpose of this agreement, "Substantial Completion" or any of its variants means all Phase 1 signs are complete ready for Final Inspection from Planning personnel.

B. Late Completion: Time is of the essence. Contractor agrees that COUNTY will suffer damage or financial loss if the work is not Substantially Completed on time or within any time extensions allowed. Contractor and COUNTY agree that proof of the exact amount of any such damage or loss is difficult to determine. Accordingly, instead of requiring any such proof of damage or specific financial loss for late completion, Contractor agrees to pay the following sums to the COUNTY as liquidated damages and not as a penalty.

1. Late Contract Time Completion: One Thousand Dollars and No cents (\$1000.00) for each calendar day or part thereof that expires after July 22, 2024, until the Work is accepted as Substantially Complete by Weber County Planning. In the event COUNTY determines that property ownership precludes a sign from completion within the project schedule, COUNTY shall eliminate that sign from the July 22, 2024 deadline. For the purpose of liquidated damages, COUNTY may apply new deadlines for such signs within a reasonable period of time by Agreement amendment.

3. Late Time Completion: 50% of the amount specified for late contract time completion for each calendar day or part thereof if the work remains incomplete after the deadline.

D. Deduct Damages from Moneys Owed Contractor: COUNTY shall be entitled to deduct and retain liquidated damages out of any money which may be due or become due the Contractor. To the extent that the liquidated damages exceed any amounts that would otherwise be due the Contractor, the Contractor shall be liable for such amounts and shall return such excess to the COUNTY.

## **2.5 RETAINAGE**

A. Retainage is COUNTY's Option: COUNTY may, in its sole discretion, retain 5 percent of the value of all work done and materials or equipment supplied as part security for the fulfillment of the Construction Contract by the Contractor. If, in Planning's opinion, the work is proceeding in accordance with Contractor's approved progress schedule, and all progress schedule submittals are current and up to date, and all required payrolls, Shop Drawings, and miscellaneous submittals are current and up to date, the COUNTY may choose not to withhold retainage.

B. Amount to be Retained: If at any time after 50% of the work has been completed, and \$50,000 or more has been retained, COUNTY may make any of the remaining progress payments in full,

if, in the COUNTY's sole discretion, the work is progressing satisfactorily. No such estimate or payment shall be construed to be an acceptance of any defective or improper work or materials.

C. Reducing the Retainage: As the work nears completion and solely at the Planning's discretion, the COUNTY may reduce the retainage to an amount more in line with the Work actually remaining.

D. Retainage Held Until Final Payment: The COUNTY reserves the right to retain all amounts previously withheld or due the Contractor, including liquidated damages, until all items are complete.

## **2.6 PAYMENT PROCEDURES**

A. Payments: Payment will be made in two portions (50% each portions). Final payment will not be made unless each sign is properly worded with correct fonts, lettering and spelling, numbers, arrows, symbols, and dimensions. Payment will not be made unless the sign complies with the specifications in the DESIGN INTENTS of **Attachments A and C** of the original bid document packet.

B. Contractor shall submit applications for payment in accordance with the 2017 Manual of Standard Specifications by the Utah Chapter of the American Public Works Association, or as may be allowed by the Engineer. Payment shall not become due or payable for any contract item not provided by Contractor.

C. Withholding Payment: COUNTY reserves the right to withhold payment from Contractor for noncompliance with any provision of the Contract Documents.

2. Price Adjustments: COUNTY will consider, with no obligation for, making partial payment to the Contractor for certain non-conforming work in advance of any negotiated settlement reached between the Contractor and the COUNTY, provided the Contractor requests in writing that this be done. Contractor agrees that any such payments made by the COUNTY are "payments in advance" and that any money which becomes due when the final settlement is negotiated will not constitute payments "withheld" or "retained" under State law.

B. Final Payment: After completion of all work, as amended herein, COUNTY shall pay the contract price due after deducting therefrom all previous payments, unit price quantity adjustments, penalties, liquidated damages, and other amounts to be retained if applicable. All prior progress payments shall be subject to correction in the final payment. The final payment shall not be due and payable until the expiration of 30 days from approval of the request for final payment of Contractor by the COUNTY Clerk's Office. Final payment, constituting the entire unpaid balance of the contract sum, shall be paid by the COUNTY to the Contractor when the work has been completed, the contract fully performed, and a final certificate for payment has been issued by Weber County Planning. Neither the final payment nor the remaining retainage shall become due until the Contractor submits to the COUNTY through the Planning and Purchasing Agent of the COUNTY, (1) an affidavit that all payrolls, bills for materials and



equipment, and other indebtedness connected with the work for which the COUNTY might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety to final payment, and (3) if required by the COUNTY, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the contract, to the extent and in such form as may be designated by the COUNTY. If after substantial completion of the work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of change orders affecting final completion, and Weber County Planning so confirms, the COUNTY shall, upon application by the Contractor and certification by Weber County Planning and without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the contract documents, and if bonds have been furnished, the written consent of the Surety of the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the Contractor to Weber County Planning prior to certification of such payment. Such payment shall be made under the terms and conditions governing payments as heretofore set forth, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of all claims by the COUNTY except those arising from: (1) unsettled liens; (2) faulty or defective work; (3) failure of the work to comply with the requirements of the contract documents, as amended herein; or (4) terms of any special warranties required by the contract documents; or (5) liability claims for which the Contractor is required to indemnify the COUNTY. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final application for payment. All provisions of this Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment.

1. COUNTY Released from Claims: The payment and acceptance of the final Contract Price due and the adjustment and payment for any work done in accordance with any alterations of the same, shall release the COUNTY from any and all claims of Contractor on account of work performed under the Contract Documents or any modification thereof, except for those claims specifically agreed to as reserved and unresolved by the COUNTY.

## **2.7 EXTRA WORK**

A. No money will be paid to the Contractor for any additions, deletions or revisions in the Work, as amended herein, unless additional contract modifications for such has been made in writing and executed by the COUNTY and Contractor.

## **PART 3 COVENANTS**

### **3.1 ASSIGNMENT NOT BINDING WITHOUT WRITTEN CONSENT**

A. COUNTY and Contractor agree no assignment of any right or interest in the Contract Documents will be made without the written consent of the COUNTY and the Contractor. No assignment will release or discharge the COUNTY or the Contractor from any duty or responsibility under the Contract Documents unless specifically stated to the contrary in any written consent to an assignment.

B. Contractor shall make no assignment of money that is due without the COUNTY's written consent (except to the extent that the effect of this restriction may be limited by law or regulation).

### **3.2 BINDING TERMS**

A. The Agreement, with all its forms, plans, specifications and stipulations, as amended herein, shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties.

### **3.3 INDEMNIFICATION**

A. Indemnification of COUNTY: CONTRACTOR shall indemnify and hold harmless COUNTY and its elected officials, officers, employees, and agents from and against all expenses, whether direct, indirect or consequential (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court costs) arising out of or resulting from the negligent acts or omissions in performance of the work by CONTRACTOR, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not the claim, damage, loss, etc. arising from the act or omission is caused in part by a party indemnified hereunder or arises by or is imposed by law and regulations regardless of the negligence of any such party. Contractor's obligation to indemnify COUNTY is not limited or waived in any way by compliance or non-compliance with the insurance requirements of this agreement. Contractor will be required to indemnify COUNTY to the fullest extent allowed by law, regardless of whether Contractor has sufficient insurance to cover this obligation.

B. Indemnification Not Limited: In any claims against COUNTY or any of its elected officials, officers, agents, employees or volunteers by any employees of CONTRACTOR, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 3.3(A) shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such subcontractor or other person or organization under worker's compensation acts, disability benefit acts or other employee benefit acts.

C. Liability of consultants, etc.: The obligations of CONTRACTOR under Paragraph 3.3(A) shall not extend to the liability of COUNTY's consultants or their agents or employees arising out of the

preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or specifications.

D. Insurance: The Contractor shall comply with the insurance requirements listed in the Contract Documents. Those insurance requirements are incorporated by this reference into this agreement. Additionally, if any of the required coverage is provided on a claims-made basis, then Contractor shall maintain the policy for no less than four years after termination of this agreement.

### **3.4 CONTRACT INTERPRETATION AND DISPUTE RESOLUTION**

A. In General: Utah law shall govern this agreement, its interpretation, and its enforcement. The parties may agree on any form of dispute resolution, whether formal or informal. In the absence of such an agreement, disputes shall be resolved through normal court processes.

B. Severability: If any provision of this agreement is determined to be invalid, its invalidity shall not be deemed to affect the validity of any other provision, and the remainder of the agreement will remain in full force and effect, unless the invalidation of the term materially alters this agreement. If the invalidation of the term materially alters the agreement, then the parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the parties.

C. Work During Dispute: Notwithstanding the pendency of any protest or appeal, Contractor shall, if so ordered by Weber County Planning proceed with the work under the Contract Documents according to Planning's direction and according to the decision on any appeal. The existence of a claim or protest shall not excuse Contractor from the requirements of the Contract Documents, including, but not limited to, the Contract Time.

### **3.5 ATTORNEY'S FEES**

A. In the event that either party institutes any action or proceeding against the other relating to the breach of any term of this Agreement, then each party shall be responsible for its own costs and attorney fees.

## **PART 4 EXECUTION**

### **4.1 EFFECTIVE DATE**

A. COUNTY and Contractor executed this Agreement and declared it in effect as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

In Witness Whereof, we have hereunto set our hands at Weber County, Utah, on the day and year first above written:

Weber County:

By \_\_\_\_\_



James Harvey, Commission Chair

Attest:

\_\_\_\_\_  
Ricky Hatch, CPA  
Weber County Clerk/Auditor

Contractor \_\_\_\_\_

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Attest: If Corporation \_\_\_\_\_

\_\_\_\_\_

Witness: if individual or partnership

**END OF DOCUMENT**