

# AGREEMENT

## PART 1 GENERAL

### 1.1 CONTRACTOR

A. Name: Graphic House, Incorporated

B. Address: 8101 International Drive, Wausau WI 54401

C. Telephone number: 715-842-0402

D. E-Mail address: bryanb@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. ~~Jared Andersen~~ 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 in Weber County, State of Utah, in the best and most workmanlike manner, and in strict conformity with the provisions of this contract, the proposal and the plans and specifications. The plans and specifications 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 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 contract, the proposal, and the 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, plus the cost of all bonds, insurance, permits, fees, and all charges, expenses or assessments of whatever kind or character. The COUNTY shall pay the Contractor, as full consideration for the performance of this contract, the contract bid price per item as shown in the proposal, for the quantities of work actually performed and accepted.

B. The schedules of prices awarded from the BID SCHEDULE DOCUMENT are as follows:

Total Contract Amount is: \$447,597.00

C. Based upon the above awarded schedules the contract price awarded is: Four Hundred Forty Seven Thousand and Five Hundred Ninety Seven dollars and Zero cents. (\$ 447,597.00).

### **2.2 CONTRACT TIME**

A. Hardware and installation materials and components for Pedestrian/Bicycle signage (Phase 1) shall be delivered to County by May 21, 2021. This shall include all components of the base/footer connection, as depicted on Page 23 of Attachment C.

B. All Work required for Pedestrian Bicycle signage (Phase 1) shall be delivered to County by June 18, 2021.

C. All other work performed under this contract shall be substantially completed by 11:59 PM, October 31, 2022.

D. 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 Engineer's Final Inspection Punch List unless exemptions of specific items are granted by Engineer 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 and installed in a reasonable and safe manner, functioning in accordance with their intended function, and ready for Final Inspection from Engineer and UDOT personnel.

~~AB. Late Completion: Time is of the essence of the Contract Documents.~~ Contractor agrees that COUNTY will suffer damage or financial loss if the work is not ~~completed~~ 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. Grant funds contingent: COUNTY and Contractor understand that COUNTY will lose a \$50,000 grant if the Pedestrian/Bicycle signage (Phase 1) is not delivered within the specified contract timeline (see contract timeline above). As a result, if these signs are not delivered in time for COUNTY to receive the grant funds, the Vehicle Wayfinding (Phase 1) will be reduced to accommodate for the difference.

2. Late Contract Time Completion: One Thousand Dollars and No cents (\$1000.00) for each calendar day or part thereof that expires after the Contract Time ~~October 31, 2022~~, until the Work is accepted as Substantially Complete by the Engineer. In the event COUNTY determines that property ownership precludes a sign from completion within the project schedule, COUNTY shall eliminate that sign from the October 31, ~~2021~~ 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 Punch List 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 Punch List time. The Punch List shall be considered delivered on the date it is transmitted by email, or received by the Contractor by certified mail.

CB. Survey Monuments: No land survey monument shall be disturbed or moved until Engineer has been properly notified and the Engineer's surveyor has referenced the survey monument for resetting. The parties agree that upon such an unauthorized disturbance it is difficult to determine the damages from such a disturbance, and the parties agree that Contractor will pay as liquidated damages the sum of \$1,000.00 to cover such damage and expense.

DC. 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 Engineer'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. 1. 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. 2. Reducing the Retainage: As the work nears completion and solely at the Engineer's discretion, the COUNTY may reduce the retainage to an amount more in line with the Work actually remaining.

D. 3. 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 Punch List items are complete. However, at Engineer's sole option, Engineer may authorize the release of up to all retained amounts except any liquidated damages and double Engineer's best estimate of the Contractor's cost to complete all remaining Punch List items.

## **2.6 PAYMENT PROCEDURES**

A. Payments: Payment will be made after a complete sign, together with all necessary anchors and/or fasteners is either delivered to the COUNTY or installed in its final installation location, as determined by the County Engineer. 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.

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 or installed 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 and Punch List items, 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 the Engineer. Neither the final payment nor the remaining retainage shall become due until the Contractor submits to the COUNTY through the Engineer 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 the Engineer so confirms, the COUNTY shall, upon application by the Contractor and certification by the Engineer 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 the Engineer 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; 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 ~~f~~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 unless a contract modification 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, 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, ~~defend,~~ and hold harmless COUNTY and ~~ENGINEER, and their~~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 ~~engineer~~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 ENGINEER~~ or any of ~~their~~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 ~~ENGINEER~~consultants, etc.: The obligations of CONTRACTOR under Paragraph ~~6.173.3(A)~~3.3(A) shall not extend to the liability of ~~ENGINEER, 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. ~~CONTRACTOR to Save COUNTY Harmless: CONTRACTOR shall assume the COUNTY's defense, and save COUNTY harmless from any claims directly or indirectly arising from CONTRACTOR's use or alleged use of patented or trademarked materials, design, equipment, devices, product or processes on or ultimately successful. In the event of such claims:~~

- ~~1. COUNTY shall promptly notify CONTRACTOR and CONTRACTOR shall defend against such claims, in COUNTY's name, but at CONTRACTOR's expense;~~
- ~~2. COUNTY shall have the right to be represented by counsel, but such representations shall be at the COUNTY's own expense; and~~
- ~~3. at the request and expense of CONTRACTOR, the COUNTY shall actively cooperate and assist CONTRACTOR to the fullest extent in the defense of any such proceedings.~~

~~In the event that CONTRACTOR shall fail to defend against any such claims, the COUNTY may, in addition to any other legal remedies which the COUNTY might have, at COUNTY's election, defend such suit and be reimbursed by CONTRACTOR of all reasonable expenses (including attorney's fees) incurred by the COUNTY in this connection, and CONTRACTOR shall pay all damages and costs awarded or otherwise suffered by COUNTY in any such claim against COUNTY.~~

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.

~~1. Unless a decision shall be held by an appropriate court of law to have been procured by fraud or to be arbitrary and capricious or so grossly erroneous as necessarily to imply bad faith, any factual decision made under this Article shall be final and binding in any suit or action arising under this Construction Contract, including any actions by Contractor or others against COUNTY or any of COUNTY's agents, consultants, or employees.~~

~~2. Compliance with provisions of this Article shall be a condition precedent prior to any legal action by the Contractor or any of Contractor's Subcontractors and Suppliers against COUNTY or any of COUNTY's agents, consultants, or employees.~~

~~3. The provisions of this Article shall not preclude or limit judicial review of issues of law.~~

~~4. Ambiguities in or between Contract Documents shall be construed in favor of the COUNTY.~~

~~B. Disputes Not Related to the Guarantee of the Work: Any dispute arising under the Construction Contract concerning a question of fact, not related to the guarantee of the work which is not disposed of by contract modification shall be decided pursuant to the following procedure:~~



~~1. Any decision by Engineer interpreting the requirements of the Contract Documents may be appealed in writing to the Engineer. The Engineer's decision shall be reduced to writing and a copy shall be mailed or otherwise furnished to the Contractor. The decision of Engineer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to Engineer a written appeal to the head of the COUNTY's department responsible for constructing the project.~~

~~2. Within 15 days from the receipt of any such appeal, the department head shall issue a decision in writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the department head shall be final and conclusive unless, within 15 days from the date of receipt of such decision, the Contractor mails or otherwise furnishes to the department head a written appeal to the Standing Appeals and Dispute Committee.~~

~~3. The Standing Appeals and Dispute Committee shall consist of the COUNTY's Attorney, the Director of Community Development, and the County Engineer or their designees.~~

~~4. The department head issuing the decision appealed from shall present the department's case prior to deliberations of the Committee, otherwise the department head shall be disqualified and excluded from the Committee's decision process.~~

~~5. The decision of said Committee shall be rendered in writing within 15 days from receipt of the appeal and mailed or otherwise delivered to the Contractor.~~

~~6. The decision of said Committee shall be the final binding interpretation of the facts which are the subject of the appeal.~~

~~C. Disputes Related to the Guarantee: Except as otherwise provided by contract Modification, any dispute concerning a question of fact involving or arising out of the guarantee required by the Contract Documents which is not disposed of by contract modification shall be decided pursuant to the provisions of Paragraph 3.4B above, except that the initial factual decision shall be issued in writing by the Engineer, together with the department head. Any appeal therefrom shall be made within 15 days directly to the Standing Appeals and Dispute Committee where such disputes shall be governed by Paragraphs 3.4B.3 to 3.4B.6 above.~~

~~CD. Work During Appeal/Dispute: Notwithstanding the pendency of any protest or appeal provided above, Contractor shall, if so ordered by Engineer, proceed with the work under the Contract Documents according to Engineer'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.~~

~~E. Appeals of Termination or Suspension: Any decision of COUNTY to terminate or suspend the work shall not be subject to the provisions of this Article.~~

### **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 the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the reasonable expenses of such action including reasonable attorney fees, incurred therein by the successful party~~ 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 ~~and seal~~ at Weber County, Utah, on the day and year first above written:

Weber County:

By \_\_\_\_\_  
Scott K. Jenkins, Commission Chair

Attest:

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

~~Contractor~~ Graphic House, Inc.

By  \_\_\_\_\_

Printed Name Bryan Borrell

Title President

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

\_\_\_\_\_  
Witness: if individual or partnership

**END OF DOCUMENT**