

## AGREEMENT

This AGREEMENT is dated as of the day of \_\_\_\_\_ in the year 20\_\_, by and between the City of Blue Ridge (hereinafter called OWNER) and Colwell Construction Co., Inc. (hereinafter called CONTRACTOR).

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

### PART 1. WORK

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

**Downtown Improvements, East Main Street**

- 1.2 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**Downtown Improvements, East Main Street**

### PART 2. ENGINEER

- 2.1 The Project has been designed by CARTER & SLOOPE, INC. who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### PART 3. CONTRACT TIME

- 3.1. CONTRACTOR agrees to commence Work under this Agreement on or before a date to be specified on a written "Notice to Proceed" of the OWNER and to fully complete the Work within **120 consecutive calendar days** from the "Notice to Proceed" date.
- 3.2. Liquidated Damages. OWNER and CONTRACTOR 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 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They 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** for each day that

expires after the time specified in Paragraph 3.1.

#### PART 4. CONTRACT PRICE

##### 4.1. Unit Price Work

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds of the amounts determined 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 estimated quantity of that item as indicated in the CONTRACTOR'S UNIT PRICE BID (attached hereto as an exhibit), said amount being:

**Nine hundred twenty-two thousand one hundred twenty one dollars and 48/100 Dollars (\$922,121.48).**

As provided in Paragraph 11.9.1 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in Paragraph 9.10 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.9.2 of the General Conditions.

#### PART 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25<sup>th</sup> day of each month during performance of the Work as provided in Paragraphs 5.1.1.1, 5.1.1.2, and 5.2 below. All such payments will be measured by the schedule of values established in Paragraph 2.6 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) as provided in the General Requirements.

5.1.1 For Cost of Work: Progress payments on account of the Cost of the Work will be made:

5.1.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with Article 14 of the General Conditions.

90% of the Work completed (with the balance being retainage). If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90% of the Cost of the Work (with the balance being retainage) applicable to materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in Paragraph 14.2 of the General Conditions).

5.1.1.2 Upon Substantial Completion, in an amount sufficient to increase the total payments to CONTRACTOR to 95% of the Cost of the Work, (with the balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with Paragraph 14.7 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 14.13.

## PART 6. INTEREST

6.1 All monies not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

## PART 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 4.2 of the General Conditions, and accepts the determination set forth in Paragraph 6 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.

- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance of Paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.3 of the General Conditions.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

## PART 8. CONTRACT DOCUMENTS

- 8.1 This Agreement
- 8.2 Exhibits to this Agreement
- 8.3 Performance and other Bonds
- 8.4 Notice of Award
- 8.5 General Conditions
- 8.6 Supplementary Conditions
- 8.7 Specifications bearing the title **Downtown Improvements, East Main Street** and consisting of all sections listed in table of contents thereof.

- 8.8 Drawings, consisting of a cover sheet and sheets numbered 1 through 24, inclusive with each sheet bearing the following general title: **Downtown Improvements, East Main Street**
- 8.9 Addenda numbers \_\_ to \_\_ inclusive.
- 8.10 CONTRACTOR's Bid
- 8.11 Documentation submitted by CONTRACTOR prior to Notice of Award.
- 8.12 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.4 and 3.5 of the General Conditions.
- 8.13 The documents listed in Paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.4 and 3.5 of the General Conditions.

## PART 9. ALTERNATIVE DISPUTE RESOLUTION

Notwithstanding the provisions contained in Article 16 of the General Conditions (Section 00700), the Contractor and the Owner specifically agree to the following processes and procedures for resolution of disputes arising pursuant to this Agreement:

- 9.1 Negotiation. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between representatives of the parties who have authority to settle the controversy, subject to ratification by the governing authority of the Owner.
- 9.1.1 Notice & Response. The disputing party shall give the other party written notice of the dispute. Within ten (10) days after receipt of said notice, the receiving party shall submit to the other a written response.
- 9.1.2 Content of Position Papers. The notice and response shall include (a) a statement of each party's position, a summary of the evidence and arguments supporting its position and (b) the name and title of the individual(s) ("Representative(s)") who will represent that party.
- 9.1.3 Meeting. The Representatives of the parties shall meet at a mutually-acceptable

time and place within twenty (20) days of the date of the disputing party's notice and, after that, as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

9.1.4 Impasse. If the matter is not resolved within forty-five (45) days of the disputing party's notice, or if the party receiving said notice will not meet within twenty (20) days, either party may initiate mediation of the controversy or claim according to the terms provided below.

9.2 Mediation. In the event any controversy arising under this agreement is not resolved by informal negotiations as provided above, the case may be referred by either party to the nearest office of Henning Mediation for mediation, that is, an informal, non-binding conference or conferences between the parties in which a mediator will seek to guide the parties to a resolution of the case.

9.2.1. Choice of Mediator. The parties are free to select promptly any mutually-acceptable mediator experienced in governmental construction law from the list at Henning Mediation. If the parties cannot agree or have no particular choice of mediator and simply request that Henning Mediation assign one to the case, then a list of the resumes of available mediators, numbering one more than there are parties, will be sent to the parties, each of whom may strike one name leaving the remaining name as the mediator. If more than one name remains, the designated mediator shall be selected by Henning Mediation from the remaining names.

9.2.2. Sessions. After the mediator has been selected, the parties shall promptly agree upon a date and time for the initial conference with the mediator, but no later than thirty (30) days after the date the mediator was selected. The parties understand and agree that, besides counsel, a representative from each side with full settlement authority (subject to ratification by the governing authority of the County) will be present at all mediation conferences unless excused by the mediator. In addition, each party may bring additional persons as needed to respond to questions, contribute information and participate in the negotiation. The number of additional persons may be agreed upon in advance with the assistance and advice of the mediator.

9.2.3. Discovery. In the event any party has substantial need for information in the possession of another party to prepare for the mediation conference(s), the parties shall attempt in good faith to agree upon procedures for the expeditious exchange of information, with the help of the mediator, if required.

9.2.4. Briefs. No later than seven (7) days before the first scheduled mediation session, each party shall deliver a concise written summary of its position together with any appropriate documents, views, and a proposed solution to the matters in controversy to the mediator and shall also serve a copy on all other parties.

9.2.5. Fees & Costs. The fees and costs shall conform to the then current fee schedule

of Henning Mediation and, in the absence of an agreement to the contrary, will be borne equally by all parties.

9.2.6. Confidentiality of Proceedings. The mediation process is to be considered settlement or compromise negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. The entire procedure is confidential, and no stenographic or other record shall be made except to memorialize a settlement record. All conduct, statements, promises, offers, views, and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views, and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties. Provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of its having been used in connection with this settlement process.

9.2.7. Termination. The mediation process shall continue until the case is resolved or the mediator makes a finding that there is no possibility of settlement through mediation or until either party by written notice to the other announces its decision not to continue further. In any event, the mediation is non-binding on the parties.

## PART 10. MISCELLANEOUS

- 10.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 10.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies 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.
- 10.3. 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 of all covenants, agreements and obligations contained in the Contract Documents.
- 10.4. Complete Agreement. This Agreement, including the Contract Documents, contains all of the understandings and agreements of whatsoever kind and nature existing between the

parties hereto with respect to the subject matter contained herein.

- 10.5 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Georgia.
- 10.6 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- 10.7 Any provision or part of the Contract documents held to be invalid 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.
- 10.8 **Notice.** All notices requests, demands and other communications hereunder shall be in writing and shall be deemed received, and shall be effective when personally delivered or on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested or upon actual delivery when sent *via* national overnight commercial carrier to the parties at the addresses given below, unless a substitute address shall first be furnished to the other parties by written notice in accordance herewith:

**NOTICE TO OWNER** shall be sent to:

City of Blue Ridge  
Kelsey Ledford  
480 West First Street  
Blue Ridge, GA 30513  
Office Number: (706) 632-2091

**NOTICE TO CONTRACTOR** shall be sent to:

Colwell Construction Co., Inc.  
Attn: Curtis Colwell  
P.O. Box 850  
587 Rock Road  
Blairsville, GA 30514

- 10.9 **Sovereign Immunity.** Nothing contained in this Agreement shall be construed to be a waiver of the Owner's sovereign immunity or any individual's qualified good faith or official immunities.



10.10 Force Majeure. Neither the Owner nor the Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond their respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of Engineer; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts and all other obligations shall remain intact.

10.11 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

**PART 11. OTHER PROVISIONS**

IN WITNESS WHEREOF. OWNER and CONTRACTOR have signed this Agreement in **four (4)** counterparts. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_.

**OWNER: City of Blue Ridge**


By \_\_\_\_\_  
CORPORATE SEAL

Attest \_\_\_\_\_

(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

**CONTRACTOR: Colwell Construction Co., Inc.**

BY

  
CORPORATE SEAL, Secretary/Treasurer

Attest



License No. Fed ID: 581142087, GA License No. 200320

Agent for service of process: \_\_\_\_\_

(If CONTRACTOR is a corporation, attach evidence of authority to sign)

END OF SECTION