

AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT is made by and between the City of Cheney, a code City of the State of Washington (“**City**”) and DIVCO Incorporated (“**Contractor**”), jointly referred to as “**Parties**”.

IN CONSIDERATION of the terms and conditions contained herein the Parties covenant and agree as follows:

1. **Work to Be Performed.** The Contractor shall do all work and furnish all labor, tools, materials, supplies and equipment for the 2020 Utility Building Street Shop Unit Heater Installation (“**Work**”) in accordance with, and as described in the Project Plans and specifications stamped and as amended through addendums (“**Contract Plans**”) including all related drawings, plans and other documents made available by the City which are by this reference incorporated herein and made part hereof (the “**Contract Documents**”). To the extent applicable or reasonably necessary to interpret the Work, the most recent publication of the Standard Specifications for Road, Bridge and Municipal Construction of the Washington State Department of Transportation (see <http://www.wsdot.wa.gov/Publications/Manuals/M41-10.htm>) is incorporated into the Contract Documents. All changes in the work shall be performed in accord with the Contract Documents, unless determined otherwise by the City.

The Contractor, as set forth in the Contractor’s bid proposal attached hereto as Exhibit A (the “**Bid Proposal**”), shall assume and be responsible for the cost and expense of all Work provided in the and Contract Documents, except those items agreed in writing to be furnished by the City of Cheney.

The Mayor or designee shall administer and be the primary contact for Contractor. Prior to commencement of work, Contractor shall contact the Mayor or designee to review the Work, schedule, and time of completion. Contractor shall receive written authorization from the City to proceed with the Work. Upon notice from the Mayor or designee, Contractor shall promptly commence Work, complete the same in a timely manner, and cure any failure in performance under this Agreement.

All Work shall be performed in conformance with the Contract Documents, City and State standards and Bid Proposal. Contractor acknowledges review of the Contract Documents and accepts the same. In the event of a conflict between the Contract Documents, City and State standards or Bid Proposal, they shall be interpreted and given precedence in the order listed herein.

2. **Term of Contract.** This Contract shall be in full force and effect upon execution of this Agreement and shall remain in effect until final completion of the Work or acceptance of the Work by the City.

The City may terminate this Agreement by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all Work previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation.** The City agrees to pay the Contractor \$ 19,083.00 plus taxes provided such amount does not exceed the Bid Proposal.

4. **Payment.** The Contractor may elect to be paid in monthly installments upon presentation of an invoice to the City, or in a lump sum upon completion of the Work. Applications for payment shall be sent to the City at the below-stated address.

The City reserves the right to withhold payment under this Agreement if the Work is determined, in the reasonable judgment of the Mayor or designee, to be noncompliant with the Contract Plans, Contract Documents, City or State standards, or Bid Proposal.

5. **Retainage.** State law requires that the City in a contract for a public improvement or work, other than performance of professional services, withhold from monies earned by the Contractor during the progress of the Work, a sum not to exceed 5% of the cost of the Work ("**Retainage**"), as a trust fund for the protection and payment of any person, mechanic, subcontractor or material men who shall perform any labor upon the contract, including the State of Washington, with respect to taxes imposed pursuant to RCW Title 82. The Retainage is held by the City pursuant to RCW 60.28.010 with the Contractor having certain options concerning the deposit or escrow of such funds. In addition, the Contractor may elect to submit a bond for all or any portion of the Retainage. After completion of the Work, other than landscaping, the Contractor may request that the City release the Retainage and sixty (60) days thereafter the City shall pay the Retainage provided there are no claims against the retained funds and the City has received from Department of Revenue, Employment Security Department and the Department of Labor and Industries certificates that all taxes, increases and penalties have been paid.

In lieu of Retainage, the Contractor may substitute a bond for the purposes set forth in RCW Chapter 60.28.

6. **Notice.** Notice shall be given in writing as follows:

TO THE CITY:

Name: Steve Marx
Light Department Director
Phone Number: 509-498-9230
Address: 112 Anderson Road
Cheney, WA 99004

TO THE CONTRACTOR:

Name: Mark Colman
DIVCO Incorporated
Phone Number: 509-534-7225
Address: 715 North Madelia Street
Spokane, WA 99202

7. **Applicable Laws and Standards.** The Parties, in the performance of this Agreement, agree to comply with all applicable Federal, State and local laws, and City ordinances and regulations. Contractor shall exercise best efforts, including the selection of highest quality materials; so that all Work performed shall be in compliance with current related industry standards.

8. **Relationship of the Parties.** It is hereby understood, agreed and declared that the Contractor shall be an Independent Contractor, and not the agent or employee of the City; that the City is interested only in the results to be achieved; and that the right to control the particular manner, method and means in which the services are performed is solely within the discretion of the Contractor. Any and all employees who provide services to the City under this Agreement shall be deemed employees solely of the Contractor.

The Contractor shall be solely responsible for the conduct and actions of all employees under this Agreement and any liability that may attach thereto.

9. **Contractor to Be Licensed, Bonded and Insured.**

A. **Licensed.** The Contractor shall be duly licensed by the State of Washington pursuant to RCW 39.06.010.

B. **Bond.** The Contractor shall, except as set forth below, obtain a bond from a surety company in an amount equal to the Contract Price for the purpose of guaranteeing the faithful performance of this contract, including paying all labors, mechanics, subcontractors and material men pursuant to RCW 39.08.010.

On contracts of one hundred fifty thousand dollars or less, at the option of the contractor or the general contractor/construction manager as defined in RCW [39.10.210](#), the respective public entity may, in lieu of the bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter [60.28](#) RCW, whichever is later. The recovery of unpaid wages and benefits must be the first priority for any actions filed against retainage held by a state agency or authorized local government.

C. **Insurance.** Contractor shall purchase and maintain, during the term of this Agreement, a comprehensive general liability policy in the amount of \$1,000,000.00 per occurrence, with the City as an additional named insured. A copy of the certificate shall be provided to the City. Notice of cancellation of such insurance shall be given to the City by Contractor's insurer.

10. **Prevailing Wages on Public Works.** This Agreement provides for the construction of a public work and payment of prevailing wages according to Washington law. All employees, workers, laborers or mechanics shall be paid a prevailing rate of wage that is set forth in an attachment to this Agreement. The payment of prevailing wages is required by Washington law, RCW 39.12.020 and WAC 296-127-01308. A prevailing rate of wage is determined by the Industrial Statistician of the Department of Labor and Industries. RCW 39.12.015.

Before any payment may be made to Contractor, a "Statement of Intent to Pay Prevailing Wages" must be submitted to the City. Following final acceptance of the public works project, the Contractor and each subcontractor shall submit an "Affidavit of Wages Paid" before retained

funds will be released to the Contractor. The affidavit must be certified by the Industrial Statistician of the Department of Labor and Industries. Any exemption to the above must be submitted by Contractor through an acknowledged statement.

11. **Warranty.** Unless provided otherwise in the Contract Plans or Contract Documents, Contractor warrants all work and materials performed or installed under this Contract is free from defect or failure for a period of one year following final acceptance by the City, unless a supplier or manufacturer has a warranty for a greater period, which warranty shall be assigned to the City. In the event a defect or failure occurs in work or materials, the Contractor shall within the warranty period remedy the same at no cost or expense to the City.

12. **Indemnification and Hold Harmless.** Contractor assumes responsibility for and shall defend, indemnify and hold the City, its agents, employees and officials (hereinafter “**Indemnitee**”) harmless from any and all claims, demands, damages, expenses, losses, fines, penalties or liabilities, including loss of use, arising from, resulting in any manner directly or indirectly from or connected with or in the course of the performance of the Work and the obligations herein, including without limitation claims of subcontractors and suppliers contracting with Contractor. Contractor’s obligation to defend, indemnify and hold Indemnitee harmless shall include, but is not be limited to, Indemnitee’s personnel-related costs, attorney and expert fees, court costs, and all other claim-related expenses, to the fullest extent permitted by law, even though such claims may prove to be false, groundless, or fraudulent, subject only to the limitations provided below.

Contractor’s duty to indemnify shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from: (a) the sole negligence of Indemnitee or (b) the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Contractor, its agents or employees with such liability limited to the extent of Contractor or Contractor’s agents or employees negligence. RCW 4.24.115

Contractor specifically and expressly waives any immunity that may be granted it under the worker’s compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Contractor’s indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

The partial or complete invalidity of any one or more provisions of this Section shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the balance of the provisions shall be considered reformed to reflect the intent of the parties to the greatest extent possible consistent with the law. The provisions of this section shall survive termination of this Agreement.

13. **Waiver.** No officer, employee, agent, or other individual acting on behalf of either party, has the power, right, or authority to waive any of the conditions or provisions of this Agreement.

No waiver in one instance shall be held to be waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement, or by law, shall be taken and construed as cumulative, and in addition to every other remedy provided herein or by law. Failure of either party to enforce, at any time, any of the provisions of this Agreement, or to require, at any time, performance by the other party of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement, or any part thereof.

14. **Assignment and Delegation.** Neither party shall assign, transfer, or delegate any or all of the responsibilities of this Agreement, or the benefits received hereunder, without first obtaining the written consent of the other party.

15. **Jurisdiction and Venue.** This Contract is entered into in Spokane County, Washington. Venue shall be in Spokane County, State of Washington.

16. **Arbitration.** All disputes arising under this Agreement shall be resolved through arbitration pursuant to State law. Rules for arbitration shall be those prescribed by the American Association of Arbitration.

17. **Entire Agreement.** This written Agreement constitutes the entire and complete agreement between the Parties, and supersedes any prior oral or written agreements. This Agreement may not be changed, modified, or altered, except in writing and signed by the Parties hereto.

18. **Anti-kickback.** No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement, shall have, or acquire, any interest in this Agreement, or have solicited, accepted, or granted, a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.

19. **Exhibits.** Exhibits attached and incorporated into this agreement are:

Exhibit "A" – "DIVCO Incorporated dated 11/16/20"

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2020.

CITY OF CHENEY:

CONTRACTOR:

Chris Grover, Mayor

By: _____
Its: _____

Fed Tax ID No. _____

ATTEST:

Cindy Niemeier, Finance Director

[End of Agreement]