

## CONTRACT

**THIS AGREEMENT** is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF COLUMBIA CITY**, a municipal corporation of the State of Oregon, hereinafter called Owner, and **TFT CONSTRUCTION, INC.**, hereinafter called Contractor. The project hereinafter referred to is commonly described as:

**Sixth Street Pavement Restoration Project from Pacific Street to Lincoln Street consisting of work outlined in the City of Columbia City Sixth Street Paving Project description dated April 24, 2017 and the TFT Construction, Inc., Estimate for Services dated April 26, 2017.**

### WITNESSETH:

**IN CONSIDERATION** of the mutual promises and covenants hereinafter contained, the Owner and Contractor hereby agree as follows:

### ARTICLE 1

**THE CONTRACT DOCUMENTS:** The Contract Documents consist of this Agreement, the City of Columbia City Sixth Street Paving Project description dated April 24, 2017, the TFT Construction, Inc., Estimate for Services, the Permit to Construction Right-of-Way Improvements, and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 8.

### ARTICLE 2

**THE WORK:** The Contractor shall perform all the Work required by the Contract Documents.

Said Work shall include, but not be limited to, the furnishing of all material, labor and equipment and permits as may be necessary for the faithful and workmanlike performance of this Contract in accordance with proposal. From time to time as may be ordered by the Owner and, in any event, immediately after completion of the Work, the Contractor shall, at their own expenses, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four (24) hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor. The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

### ARTICLE 3

**TIME OF COMMENCEMENT AND COMPLETION:** The work to be performed under this Contract shall be commenced no earlier than the \_\_\_\_\_ day of \_\_\_\_\_, 2017, and, subject to authorized adjustments, completion in accordance with the Contract Documents shall be achieved not later than \_\_\_\_\_, 2017.

### ARTICLE 4

**CONTRACT SUM:** The Owner shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of **FIFTY-NINE THOUSAND FIVE HUNDRED DOLLARS AND no/100 (\$59,500.00)**. Contractor agrees that Owner shall not be responsible or liable to pay any sum of money over the contract total of \$59,500.00; and that Owner shall not be liable or responsible for any payment for additional work or cost unless Owner specifically assumes in writing such responsibility and liability on and by itself.

### ARTICLE 5

**FINAL PAYMENT:** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when the work has been completed, the Contract fully performed, and all payrolls, material bills and other indebtedness connected with the work have been paid.

### ARTICLE 6

**CONTRACTOR'S REPRESENTATIONS:** In order to induce Owner to enter into this agreement, Contractor makes the following representations:

**6.1** Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

**6.2** Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

**6.3** Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work.

**6.4** Contractor will:

(a) Make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the Work provided for in the Contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against Owner on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

## ARTICLE 7

### BONDING AND INSURANCE:

**7.1 Performance Security:** Performance Security is not required by reason of ORS 279C.380(5).

#### 7.2 Insurance:

**7.2.1 Responsibility for Damages/Hold Harmless:** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this contract, or from any act, omission or neglect of the Contractor, his subcontractors, personnel, or agents.

**7.2.2 Primary Coverage:** Insurance carried by Contractor under this Contract shall be the primary coverage, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible.

**7.2.3 Comprehensive or Commercial General Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided for under this contract and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000.00 , or the equivalent.

**7.2.4 Automobile Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance. This coverage may be written in combination with the Comprehensive or Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent.

**7.2.5 Workers' Compensation:** The Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon Law for all their subject workers. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000.00 each accident. Contractors who perform the work without the assistance or labor of any employee need not obtain such coverage. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a Certificate of Insurance from each subcontractor or anyone else directly employed by either the Contractor or its subcontractors.

**7.2.6 Certificate(s) of Insurance/Notice of Cancellation or Change:** Before this Contract can be signed, the Contractor shall furnish Certificate(s) of Insurance as evidence of the insurance coverages required by this Contract, including Workers' Compensation. The Certificates and any endorsements or attachments must contain the policy numbers and the beginning and ending dates of all policies. The Institution and Project name must be included on each Certificate(s). The Certificate(s) must provide that the insurance company give a thirty (30) day notice, without reservations, if the insurance is cancelled or changed.

## **ARTICLE 8**

### **MISCELLANEOUS PROVISIONS:**

**8.1 Prevailing Wage:** Contractor is exempt from paying prevailing wages by reason of ORS279C.810(2).

**8.2 Indemnity:** Contractor agrees that his performance under this Contract is at his own sole risk and that he shall indemnify Owner, its agents and employees, against, and hold them harmless from, any and all liability for damages, costs, losses and expenses resulting from, arising out of or in any manner connected with this Contract, or from Contractor's failure to perform fully hereunder, and Contractor further agrees to defend Owner, its agents and employees, against all suits, actions or proceedings brought by any third party against them for which Contractor would be liable hereunder.

**8.3 Environmental Laws:** Contractor shall refrain from storing on or discharging from or onto the Premises any hazardous, toxic or infectious wastes, materials or substances and any other pollutants or contaminants as now or hereafter defined by any federal, state or local agency rule or regulation, including, as amended, the Clear Air Act ("CAA"), the Clean Water Act ("CWA"), the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), and the Emergency Planning and Community Right-to-Know Act, together with, all regulations

adopted thereunder. Contractor shall save harmless, indemnify and defend Owner from any claim, demand or liability resulting from such wastes, materials substances, pollutants and contaminants, and Contractor shall pay all costs and expenses resulting from such wastes, materials, substances, pollutants or contaminants, including but not limited to, cleanup costs, consultant fees, expert fees, attorney fees, fines, judgments, forfeitures, damages for loss of use and all other losses of any kind.

**8.4 Attorney Fees:** If either party commences any legal action, suit or proceeding against the other to enforce the terms of this Contract, the parties agree that the prevailing party may be awarded reasonable attorney's fees and costs incurred in any such action, suit or proceeding, or in any appeal therefrom.

**8.5 Rejection:** Owner reserves the right to reject any bid or to refuse delivery of material at or from any source which Owner has reasonable grounds to believe is or may be operating in violation of any local, state or federal laws or which is the subject of pending litigation.

**8.6 Modifications:** Modifications or amendments to this Contract shall be effective only if in writing and executed by both parties.

**8.7 Definitions:** Terms used in this Agreement which are defined in the Contract shall have the meanings designated in the Contract.

**8.8 Contract Documents:** The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for modifications, issued after execution of this Agreement are enumerated as follows:

- The City of Columbia City 6th Street Paving Project description, attached hereto as Exhibit "A";
- The TFT Construction, Inc., Estimate for Services attached hereto as Exhibit "B";
- The Permit to Construction Right-of-Way Improvements, attached hereto as Exhibit "C."

**8.9 Discrepancies:** Any conflict or difference between the Contract Documents shall be called to the attention of the Owner by Contractor before proceeding with work affected thereby. In case of any conflict or any discrepancy between the Contract Documents, the specific provision of the Contract shall have priority over all others.

**8.10 Void Provisions:** Any provision or part of the Contact 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 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.

**8.11 Assignment:** No assignment by Contractor of any rights under or interests in the

Contract Documents will be binding on Owner without the written consent of the Owner; 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.

**8.12 Binding Effect:** 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.

**IN WITNESS WHEREOF**, the parties have executed this Contract on this day and year first hereinabove written.

**CONTRACTOR:**

**OWNER:**

**TFT CONSTRUCTION, INC.**

**CITY OF COLUMBIA CITY, OREGON**

By \_\_\_\_\_

By \_\_\_\_\_  
**Cheryl Young**, Mayor

By \_\_\_\_\_  
**Leahnette Rivers**, City Administrator

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

PO Box 189, 1840 Second Street  
Columbia City, OR 97018