

BAKER

Baker Grading & Landscaping, Inc.

CONTRACT AGREEMENT

THIS AGREEMENT entered into this, **June 22, 2020**, by and between **Baker Grading & Landscaping, Inc.** of the State of North Carolina, with its principle office at 1000 Bat Cave Road, Old Fort, NC 28762, the "Contractor", hereinafter called ("**BAKER**"), and the **Town of Woodfin of 90 Elk Mountain Road, Woodfin, NC 28804**, the "Owner", hereinafter called ("**TTOW**").

WITNESSETH:

The Contractor "**BAKER**" has entered into a contract dated **June 22, 2020** based on a proposal filed **May 14, 2020**, with the Owner "**TTOW**", for the construction of a project identified as: **Silver-Line Park**, hereinafter called (the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner "**TTOW**" and the Contractor "**BAKER**" agree as follows:

ARTICLE 1 - SCOPE OF WORK

- (1) BAKER shall perform all construction services, and provide all material, equipment, tools and labor, necessary to complete the Project as described in the attached proposal dated **May 14, 2020** and reasonably inferable from the Contract Documents, including any additions, deletions or modifications mutually agreed upon and formally incorporated into the Project.

ARTICLE 2 - THE CONTRACT AND CONTRACT DOCUMENTS

- (1) **The Contract:** The Contract between BAKER and TTOW consists of this document and the other Contract Documents described in Article 2 Section 2, "The Contract Documents". The Contract shall be effective as of **June 22, 2020**, the date of its approval, and that date shall also be considered the execution date of the Contract.
- (2) **The Contract Documents:** The Contract Documents consist of this Agreement (including all Exhibits, Schedules, and Attachments), the Proposal dated **May 14, 2020**, and all Construction Documents hereafter prepared by BAKER and approved by TTOW including all written modifications, amendments, minor changes, Change Orders and Field Orders issued hereafter in accordance with this Agreement and the Contract Documents.

ARTICLE 3 - GENERAL PROVISIONS

- (1) TTOW and BAKER agree to proceed on the basis of trust, good faith and fair dealing.
- (2) BAKER is fully qualified to act as the the general contractor for the Project and is, and will remain, licensed to practice general contracting by all public entities that have jurisdiction over BAKER or the Project.

- (3) BAKER will maintain all necessary licenses, permits or other authorizations necessary to act as the Contractor for the Project until BAKER's duties under this Contract have been satisfied.
- (4) The standard of care and standard of services applicable to BAKER's construction services is the degree of skill and diligence normally employed by providers of technical services, construction professionals, and skilled construction tradesmen and/or staff performing the same and/or similar services.
- (5) All notices to BAKER shall be in writing and shall be signed by an authorized representative of TTOW. Such notices can be delivered in person to the official representative of BAKER or mailed to BAKER's official address in Article 10 Section 2 hereof. Such delivery in person or by mail shall constitute service of notice.

ARTICLE 4 - INTERPRETATION AND INTENT

- (1) It is the intent of TTOW and BAKER to include all items necessary for the proper execution and completion of the Project. Prior to execution of the Agreement, TTOW and BAKER shall review all the Contract Documents, for any conflicts or ambiguities. TTOW and BAKER will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.
- (2) The Contract Documents are intended to permit the parties to complete the Project and all obligations required by the Contract Documents within the construction schedule and Contract Price.
- (3) The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards.
- (4) In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, TTOW and BAKER shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Article 2 Section 2 of The Contract Documents hereof.
- (5) If TTOW's Project Criteria contain specifications:
 - (a) BAKER shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in TTOW's Project Criteria.
 - (b) BAKER shall be entitled to an adjustment in the Contract Price and/or Contract Time to the extent BAKER's cost and/or time of performance have been adversely impacted by such inaccurate design specification.
- (6) The Contract Documents for the entire agreement between TTOW and BAKER and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

ARTICLE 5 - CONTRACT TIME

- (1) **Contract Commencement:** The "Commencement Date" is within (45) days of BAKER's receipt of TTOW's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.
- (2) **Contract Time:** The work will be substantially complete and ready for final payment by **August 30, 2021**. Any delay in the Contract Commencement Date that adversely affects the Project schedule shall not bind BAKER to the original Contract Time and Contract Schedule.
- (3) **Substantial Completion:** Substantial Completion is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete in accordance with the Contract Documents so that TTOW can occupy or use the Project or portion thereof for its intended purposes.
- (4) **Final Completion:** Final Completion of the Project or identified portions of the Project shall be achieved as expeditiously as reasonably practicable and without adverse affect to quality workmanship.
- (5) **Time is of the Essence:** TTOW and BAKER mutually agree that time is of the essence with respect to maintaining in good faith the schedules, milestones, dates and times set forth in the Contract Documents.

ARTICLE 6 - CONTRACT PRICE

- (1) **Contract Price:** TTOW shall pay BAKER in accordance with the Contract Documents the sum of **One Million Eight Hundred Ninety Thousand Four Hundred Fifty-Nine and 50/100 Dollars (\$1,890,459.50)** the ("Contract Price"), subject to adjustments made in accordance with The Contract Documents of Article 2 Section 2 hereof.

ARTICLE 7 - PROCEDURE FOR PAYMENT

- (1) **Application for Payment:** BAKER shall submit to TTOW on the **thirtieth (30th)** day of each month, beginning with the first month after the date of Contract Commencement, BAKER's Application for Payment on the basis for Work completed during the previous month.
- (2) **Progress Payments:** TTOW shall make payment within **ten (10)** days after TTOW's receipt of each properly submitted and accurate Application for Payment, but in each case less the total of payments previously made for Work completed.
- (3) **Interest:** All Payments due and unpaid by TTOW to BAKER shall bear interest commencing **(5) days** after payment is due at the rate of **one and one-half percent (1.5%)** per month until paid.
- (4) **Engineer of Record:** Equinox Environmental Consultation and Design, Inc., of 37 Haywood Street, Asheville, NC 28801, hereinafter called ("**EQUINOX**") shall serve as the Engineer of Record for the Project. EQUINOX shall inspect and approve, on behalf of TTOW, the accuracy and workmanship of the work completed in accordance with the contract documents each application for payment prior to progress payment.
- (5) **Retainage:** TTOW may retain a portion of the amount due BAKER each progress payment until substantial completion. The amount retained by TTOW shall be limited to the following:
 - (a) Not more than **five percent (5%)** of work claimed shall be withheld until the contract reaches fifty percent (50%) completion.
 - (b) No further retainage shall be withheld from progress payments once the contract has reached fifty percent (50%) completion.

- (c) TTOW may reinstate a **five percent (5%)** retainage after the contract reaches fifty percent (50%) completion in the event Project workmanship or progress become unsatisfactory.
 - (d) TTOW may withhold additional retainage from progress payments as necessary to maintain a total retainage of not less than **two and one half percent (2.5%)** of contract cost through substantial completion.
- (6) **Sales Tax Statement:** BAKER shall submit to TTOW a North Carolina State sales and use tax statement on materials and equipment incorporated into the project each application for payment.

ARTICLE 8 - SUSPENSION AND TERMINATION

- (1) **Termination:** Upon (30) day's written notice to BAKER, TTOW may, for its convenience and without cause, elect to terminate this Agreement. In such event, TTOW shall pay BAKER for the following:
- (a) All Work executed and for proven loss, cost or expense in connection with the Project;
 - (b) The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors, Engineers and Design Consultants; and
 - (c) The fair and reasonable sums for overhead and profit on the sum of items (a) and (b) of Article 8 Section 1 above.
- (2) **Suspension:** In the event TTOW directs a suspension of performance, through no fault of BAKER, and provided BAKER submits a proper claim as provided in this Contract, TTOW shall pay BAKER as full compensation for such suspension BAKER's reasonable costs, actually incurred and paid, of:
- (a) demobilization and remobilization, including such costs paid to Subcontractors, Engineers and Design Consultants;
 - (b) preserving and protecting Construction Work in place;
 - (c) storage of materials or equipment purchased for the Project, including insurance and bonds thereon; and
 - (d) performing in a later, or during a longer, time frame than that contemplated by the Project Proposal dated **May 14, 2020** and/or the "Contract Documents".

ARTICLE 9 - INSURANCE

- (1) Before commencing Work for the Project, BAKER shall provide TTOW verifying certificates of Insurance from reputable insurers authorized to do business in the state of North Carolina.
- (2) Per industry standards, BAKER shall warrant that policies shall not be canceled or changed until at least thirty (30) days prior written notice has been given TTOW.
- (3) Unless otherwise required in this Agreement, BAKER shall during the performance of the Contract, maintain in full force and effect Insurance complying with all North Carolina statutory requirements and maintain a minimum insurance coverage during the Project of the types and amounts specified:
- (a) **Comprehensive General Liability** including the following:
 - \$1,000,000 Each Occurrence for bodily injury and property damage
 - \$1,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 General Aggregate over all interests
 - (b) **Comprehensive Automobile Liability** including coverage for owned, non-owned and hired vehicles:

\$1,000,000 Bodily Injury
\$1,000,000 Property Damage

(c) **Worker's Compensation Insurance** including the following:

\$1,000,000 Each Accident
\$1,000,000 Each Employee

(4) A certificate of Insurance shall be included as "Exhibit B".

ARTICLE 10 - REPRESENTATIVES OF THE PARTIES

(1) TTOW has designated the person below as its designated representative for general management of this Agreement. Any reference to TTOW herein is a reference to the person named below, but only in such person's capacity as a representative for TTOW.

Name: Eric Hardy
Title: Town Administrator
Address: 90 Elk Mountain Road, Woodfin, NC 28804
Phone: (828) 253-4887
Email: erichardy@woodfin-nc.gov

For the purpose of correspondence and notices, copies shall be sent to:

ATTN: Eric Hardy
The Town of Woodfin
90 Elk Mountain Road
Woodfin, NC 28804
Phone: (828) 253-4887
Email: erichardy@woodfin-nc.gov

(2) BAKER has designated the person below as it's designated representative for general management of this Agreement.

Name: Charles Baker
Title: Vice President, Managing Director
Address: 1000 Bat Cave Road, Old Fort, NC 28762
Phone: (828) 668-5060 ext. 11
Fax: (828) 668-5065
Cell: (828) 318-5635
Email: charles@bakergrading.com

For the purpose of correspondence and notices to BAKER, copies shall be sent to:

ATTN: Charles Baker
Baker Grading & Landscaping, Inc.
1000 Bat Cave Road
Old Fort, NC 28762
Phone: (828) 668-5060
Fax: (828) 668-5065
Email: charles@bakergrading.com



ARTICLE 11 - INDEMNIFICATION

- (1) BAKER and TTOW shall, to the extent that the same may be caused by its own negligence or willful misconduct, defend and indemnify the other, its officers, employees and agents, against and hold them harmless from all liability, damage, cost or expense. Prompt notice shall be given of any such claim.

ARTICLE 12 - WARRANTY

- (1) BAKER warrants to TTOW that all Work will be of good quality and will conform with the Contract Documents. Work not conforming to the requirements of the Contract Documents will be corrected by BAKER.
- (2) All material's furnished and incorporated into the Project will be of good quality, and free of defects.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

- (1) **Governing Laws:** The validity or construction of this Agreement, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of North Carolina without regard to its choice of law provisions.
- (2) **Partial Invalidity:** If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.
- (3) **Default:** Should either party breach any provisions of this Agreement the non-breaching party shall have the rights and remedies provided by law or under these terms and conditions.
- (4) **Non-Disclosure:** Except as expressly permitted by the Agreement, BAKER and TTOW shall maintain to each and the other all Proprietary Information in confidence and not disclose it to any third party. TTOW shall handle the Proprietary Information with the same degree of care it applies to its own confidential information, and at a minimum all due care to protect the confidentiality of the Proprietary Information.

LIST OF EXHIBITS AND CONTRACT SUPPLEMENTS

EXHIBIT A	PROPOSAL DATED MAY 14, 2020
EXHIBIT B	INSURANCE
EXHIBIT C	PLANSET DATED APRIL 1, 2020
EXHIBIT D	SPECIFICATIONS DATED MARCH 31, 2020

IN EXECUTION of this Agreement as of the date first written above, TTOW and BAKER each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each is duly authorized with the necessary corporate approvals to execute this Agreement, and perform the services described herein.

ATTEST:

Baker Grading & Landscaping, Inc.
1000 Bat Cave Road
Old Fort, NC 28762

Ann Pearson
Witness

[Signature]
(Contractor)

Date: 7/21/2020

Name: Charles Baker
Title: Vice President

Town of Woodfin
90 Elk Mountain Road
Woodfin, NC 28804

[Signature]
Witness

[Signature]
(Owner)

Date: 7-21-20

Name: Eric T. Hardy
Title: Town Administrator

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act

[Signature]
(Signature of finance officer)