

**AGREEMENT BETWEEN OWNER & CONTRACTOR FOR
CONSTRUCTION CONTRACT**

This Construction Services Agreement (AGREEMENT) made and entered into on _____, 2021

by and between the OWNER, Yancey County

10 Town Square, Room 11

Burnsville, NC 28714

and the CONTRACTOR, _____

including DRAWINGS & SPECIFICATIONS, describes the Services to be provided by CONTRACTOR for

Cane River Park Repairs (PROJECT) located in Yancey County, NC.

I. PROJECT INTENT

Both the CONTRACTOR and OWNER understand that the objective of the PROJECT is to:

Provide improvements for Park Repairs related to the Ballfield & Equipment, Soccer Field & Equipment, Parking Lot, Playground & Equipment, Natural Playground, Exercise Area & Equipment, Trails, General Park Fencing, Park Site Furnishings, Park Signage, Landscaping, Dog Park Fencing as well as Soccer Field Irrigation, including well. Reference Master Plan for improvement locations.

II. WORK

The CONTRACTOR agrees to furnish all supervision, labor, materials, equipment, and tools necessary to fully complete the PROJECT in a professional manner, as specified in the Construction Bid Drawings and Specifications and in accordance with the timeframes specified in Section IV of this AGREEMENT. CONTRACTOR assumes all obligations, risks and responsibilities with regard to the WORK.

III. CHANGES

The WORK may be supplemented or modified only with written approval from the OWNER and no work believed to constitute a change is compensable unless a written Amendment is executed by both parties.

IV. TERM OF AGREEMENT

This AGREEMENT shall be effective upon full execution signified by the signing of both parties. CONTRACTOR shall commence the WORK within 15 days of receipt of Notice to Proceed from the OWNER and shall use its best efforts to complete the WORK in accordance with the schedule to be established by the OWNER, subject to normal weather conditions at the PROJECT site. The CONTRACTOR must complete the WORK within **90 days** or no later than **JUNE 1, 2021** (COMPLETION DATE).

CONTRACTOR will proceed with the WORK in a prompt and diligent manner, in accordance with OWNER's current schedule for the WORK. The CONTRACTOR will use its best efforts to coordinate the WORK so as not to impede the progress of other work required to be provided by or for OWNER on the PROJECT. To the extent that the actions of the CONTRACTOR causes a delay or interference with the completion of all or any part of the PROJECT and as a result thereof OWNER incurs damages, then such damages shall be borne by the CONTRACTOR.

OWNER shall have the right to terminate this AGREEMENT upon ten (10) days written notice as provided in Section VII of this AGREEMENT.

V. AGREEMENT PRICE

The agreement price shall be the base bid indicated on the Bid Form. Changes to the agreement price may be made if the actual quantities installed differ from those indicated on Bid Form. The value of such changes shall be based on the contract unit costs, subject to the provisions of Section III herein.

VI. TERMS OF PAYMENT

The CONTRACTOR shall submit invoices on a monthly basis. Payments shall be paid within thirty (30) days following OWNER's acceptance of the work and OWNER'S receipt of CONTRACTOR's invoice for work performed through the date of such invoice.

As a condition precedent to partial or final payment hereunder and as a part of the consideration under this AGREEMENT, acceptance of final payment shall constitute a waiver of any and all claims, known or unknown, of CONTRACTOR.

No payment or compensation of any kind shall be made to the CONTRACTOR for damages because of hindrance or delay in the progress of the WORK and arising from the actions or inactions of the CONTRACTOR or its subcontractors or suppliers, whether such hindrances or delays are avoidable or unavoidable.

VII. CONTRACTORS FAILURE TO PERFORM

If, in the opinion of OWNER, the CONTRACTOR at any time refuses or fails to provide sufficient properly skilled workers or materials of the proper quality, fails in any respect to execute the WORK according to the current schedule, or fails to comply with all provisions of this AGREEMENT, then after serving ten (10) days prior written notice, unless the condition specified in such notice shall have been eliminated within such 10-day period, OWNER may at its option terminate the AGREEMENT for default. In the event of termination for default, OWNER may, at its option utilize any or all of the following: (1) require CONTRACTOR to assign to OWNER any or all of its subcontract or purchase orders involving the PROJECT, or (2) complete the WORK either by itself or through others, by whatever methods as shall be accepted by OWNER. If OWNER'S cost to complete the WORK exceeds the unpaid balance then due under the AGREEMENT, then CONTRACTOR shall pay OWNER the difference within ten (10) business days following OWNER's demand for same.

Upon receipt of notice from OWNER of termination as provided for in this AGREEMENT, CONTRACTOR shall: (1) cease operations as directed by OWNER in the notice; (2) take actions necessary, or that OWNER may direct, for the protection and preservation of the WORK; and (3) except for the WORK directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In the case of such termination, CONTRACTOR shall be entitled to receipt of payment for the WORK executed.

VIII. CONTRACTOR'S INSURANCE

Prior to commencing the WORK, CONTRACTOR shall procure, with OWNER named as additional insured parties, and thereafter maintain, at its own expense, until final acceptance of the WORK, liability insurance coverage in the minimum amount of \$1,000,000.00 in a form and from insurers reasonably acceptable to OWNER.

CONTRACTOR shall maintain insurance in the minimum amount of \$1,000,000 (\$100,000/occurrence) for claims under applicable worker's compensation and other employee benefit acts, for claims for bodily injury, including death, and from claims for damages to property which may arise both out of and during operations under this AGREEMENT.

CONTRACTOR shall provide proof of adequate insurance under this Section to OWNER before commencing WORK.

IX. CONTRACTOR'S LIABILITY

CONTRACTOR shall be liable to OWNER for all costs OWNER incurs as a result of CONTRACTOR'S failure to perform this AGREEMENT in accordance with its terms. CONTRACTOR'S failure to perform shall include the failure of its suppliers and/or subcontractors of any tier to perform the WORK. CONTRACTOR'S liability shall include, but not be limited to damages and other delay costs incurred by OWNER and attorney's fees and related costs incurred by OWNER and due to CONTRACTOR'S liability hereunder.

If any person, including employees of CONTRACTOR, suffers injury or death or any property is damaged, lost or destroyed as a result, in whole or in part, of negligence of CONTRACTOR, its employees, agents or subcontractors, then the CONTRACTOR shall assume the liability thereof, and shall at OWNER'S option defend any action, pay all costs including attorney's fees and satisfy any judgments entered against OWNER in regard thereto and CONTRACTOR further agrees indemnify and to hold OWNER and their agents, employees and sureties harmless

thereof.

X. LIABILITY OF CONTRACTOR FOR DEFECTS

CONTRACTOR shall be liable for latent defects, faulty materials and faulty workmanship and shall further be liable for correcting such defects, replacing faulty materials and correcting faulty workmanship without cost to the OWNER. CONTRACTOR is responsible for ensuring that all material and equipment required for the WORK shall be new unless otherwise specified and that the WORK shall be of good quality free from faults and defects and in conformance with the PROJECT Plans and Specifications.

XI. CLEAN-UP

CONTRACTOR shall clean up and remove all debris resulting from the WORK in a manner that will not impede the progress of the PROJECT. If the CONTRACTOR fails to comply with this Article within 36 hours after receipt of notice of noncompliance from OWNER, OWNER may perform such necessary clean-up and deduct the cost from any amounts due to the CONTRACTOR.

XII. TAXES AND PERMITS

CONTRACTOR shall pay for, comply with and hold OWNER harmless against the payment of all contributions, taxes or premiums which may be payable by it under Federal, state or local laws arising out of the performance of this AGREEMENT, and all sales, use or other taxes of whatever nature levied or assessed against OWNER or CONTRACTOR arising out of this AGREEMENT, including any interest or penalties.

CONTRACTOR shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the execution and completion of the WORK, unless otherwise provided by the OWNER, and shall arrange for all necessary inspection and approvals by public officials, unless otherwise arranged for by OWNER. CONTRACTOR shall maintain on site at all times copies of all applicable permits, licenses, and inspections.

XIII. DOCUMENTATION

- A. Construction Bid Proposal Form
- B. Park Master Plan

XIV. ACCEPTANCE

ACCEPTED and AGREED to on this _____ day of _____, 2021

OWNER

CONTRACTOR

Signature

Signature

Printed Name and Title

Printed Name and Title

