

STATE OF NORTH CAROLINA)
)
TOWN OF HUNTERSVILLE)

THIS AGREEMENT, made this, _____ day of _____, 20 __, by and between the town of Huntersville, a municipal corporation organized and existing under the laws of the State of North Carolina and herein after called Town, party of the first part, and hereinafter called **CONTRACTOR**, party of the second part,

W I T N E S S E T H:

That for and in consideration of the covenants and agreements herein set forth the parties here to mutually promise and agree as follows:

1. **STATEMENT OF WORK:** The Contractor shall furnish all supervision, labor, materials, tools, equipment, and perform and complete all work in an efficient and workmanlike manner, and in accordance with the terms of this agreement, as shall be necessary to complete construction of the Veterans Park at Main and Maxwell, in accordance with the plans and specifications dated September 21, 2016, as prepared by Stewart, Inc., and as per the accepted Proposal of the party of the second part dated _____ .

GENERAL CONTRACT AMOUNT:
Dollars **(\$1,560,500.00)**

2. **CONTRACT PERIOD:** The Contract Period as defined shall begin on the date specified on a written notice to proceed from the Engineer to the Contractor. This date is to be no more than approximately sixty (60) days after the acceptance of the Proposal of the Contractor by the Town Board in public meeting. The work is to be diligently prosecuted to completion within calendar days after the beginning of the Contract Period. It is further agreed that the Town Manager shall have the right at his discretion to extend the time for completion of the Work.
3. **ADDITIONAL WORK:** The Town may require the Contractor to furnish materials and to do additional Work not provided in the Contract or in the Specifications, but which may be found necessary to the proper protection and completion of the work embraced in this Contract, at prices to be fixed by the prices named in the Proposal, or on material and force account, at actual cost with ten (10%) per cent added for profit and overhead, as specified under General Conditions. But no other work than that included in the Contract shall be done, and no additional material shall be furnished by the Contractor without a written order from the Engineer. In the absence of such a written order from the Engineer, the Contractor shall not be entitled to payment for such additional Work. Bills for extra Work shall be filed with the Town within three (3) days after such extra Work is completed, in order that the Engineer may establish the accuracy of the extra Work bills.
4. **TERM OF CONTRACT: LIMITATIONS:** And said Party of the Second part agrees to receive the prices stated in the Proposal attached, in full compensation for furnishing materials, and for labor in moving materials and executing all the Work contemplated and shall be responsible for all loss or damage arising out of the nature of the Work aforesaid or from any action of the elements or from any unforeseen obstruction or difficulties which may be encountered in the prosecution and delivery of the same, and for all risks of every nature and description connected with the Work and furnishing materials until their final completion and acceptance; also for the expense incurred by or in consequence of the suspense or of the discontinuance of said Work and furnishing said materials according to Plans, Specifications, and requirements the Engineer under them. And the said Party of the Second Part hereby further agrees that the said Town shall be and is hereby authorized to deduct and retain out of the monies which may be due or become due to Said Party of the Second Part under this agreement, as damages for the non-completion of the Work or

delivery of materials aforesaid within the time herein before stipulated for completion or within such further time as in accordance with the provisions of this agreement shall be fixed or allowed for such performance and completion, the sum of Five Hundred (\$500.00) dollars per day is hereby fixed and determined by the Parties hereto as the liquidated damages, that the Party of the First Part will suffer by reason of such default and not by way of the penalty, and shall include all actual and additional expense of the Town and the Engineer due to the delay.

To prevent all dispute and litigation, it is agreed by and between the Parties of this Contract that the Engineer shall in all cases determine the quantity and quality of the several kinds of work and materials which are to be paid for under this Contract, and he shall determine all questions in relation to lines, elevations, and dimensions of the Work, and as to the Interpretation of the Plans and Specifications.

5. **THE CONTRACT PAYMENTS:** Partial payments will be made once a month, less ten (10%) per cent retainage, provided satisfactory progress is maintained on the project. The Engineer may withhold such monthly estimate when said estimate in his opinion will amount to \$1,000.00 or less. On the Completion of the Work, The Engineer shall proceed with due diligence to measure up the Work and Material and present his Final Estimate to the Town, whereupon the Town shall pay or cause to be paid within thirty (45) days thereafter such amount, less payments previously made, in legal tender of the United States, and such payments of such Final Amount shall release the Town from all claims for Work done or Materials furnished under this Contract.

The Town will require full release of all claims for materials or labor furnished for this Work, and **prior to the Final Payment of the Final Estimate, the Contractor shall furnish the Town with a written statement sworn before a Notary Public to the effect that all payments have been made for labor and materials used in this Construction, and that claims, suits, and proceedings of every name and description against the Town, its officers and agents has been settled.** The Contractor shall furnish the Town, prior to the Final Estimate, written permission from the Town's Bondsman that such Final Estimate is to be paid to the Contractor.

6. **SUBCONTRACTS:** The Contractor shall not execute an agreement with a subcontractor or permit any subcontractor to perform any Work included in this Contract without the prior written approval of the Town Engineer, which approval may be conditioned upon compliance with subcontractor with all the terms of this Contract relating to the Work of such subcontractor.
7. **PERMITS AND CODES:** The Contractor shall give all notices required by, and comply with, all applicable laws, ordinances, and codes and shall, at his own expense, secure and pay the fees or charges for all permits required for the performance of the Contract Work.
8. **CARE OF WORK:** The Contractor shall furnish and erect, at his own expense, whatever covers, or other works as may be necessary for the protection of the public and for the safe and proper execution of the Contract Work. The Contractor shall exercise the highest degree of care with regard to the water and sewer lines and other public utility lines so as not to interfere therewith or damage or cause damage there to. The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault, omission, or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all work performed hereunder until completion and Final Acceptance, whether or not the same has been covered in whole or in part by payments made by the Town.
9. **INSPECTION AND SUPERVISION:** The Town, acting through the Engineer, reserves the right to place Inspectors on the Work or at the place of Shipment, or Delivery of Materials, or at the factory or Works of the Contractor to observe the quality of the Work done and materials used, and the Contractor agrees to afford said Inspectors all proper facilities for carrying out their duties. It is agreed and understood that the Town, through its Engineer or Inspector, or other agent, has the right to supervise Completion of the Work according to the Plans, Specifications and Contract, and without unnecessary inconvenience to the public but nothing contained in the Contract and

Specifications shall be taken or understood to authorize such control of the Work or Delivery of Materials as to relieve the Contractor of its obligations, or as to make the Contractor an agent of the Town. The Contractor is warned that the Engineer or any of his assistants or any Inspector has no power to vary his Contract, and that any variation from this Contract or Specifications shall be at the Contractor's own risk. The Contract is an agreement between the Town of Huntersville and the Contractor, and its acceptance by the Governing Body of the Town is a matter of record in the Minutes of the Town Clerk, and no person or persons is or are authorized to relax from its provisions unless such proposed substitution or variation is brought before the Town Commissioner at a regular meeting open to the public and acted upon favorably by resolution of the Commissioners and the same is spread upon the Minute Book of the Town Clerk.

- 10. COMPLETION BY TOWN UPON WORK ABANDONMENT OR TERMINATION FOR CAUSE:** The Contractor further agrees that if the Work to be done under this Contract shall be abandoned, or if the Contract shall be assigned by said Contractor otherwise than herein provided, or if at any time the Engineer shall be of the opinion and shall so certify in writing to said Town that the Work is unnecessarily or unreasonably delayed, or that said Contractor is willfully violating any terms or conditions of this Contract or is not making such progress in the execution of said Work as to indicate its completion within the time specified, the Town shall have the right to notify the Contractor to discontinue said Work or such part or parts thereof as said Town may designate; and said Town shall thereupon have the power and the right to employ by contract or otherwise, and in such manner at such prices as it may determine any persons, and obtain any materials, equipment, and other means of construction which it may deem necessary to complete the Work herein described, or such part or parts of it as said Town may have designated; also power to use equipment and material and means of construction of every description as may be found upon the line of said Work, both to enter into to complete Work and to procure other materials for the completion of said Work and for carrying out the terms of this Contract; also to charge the expense of all said superintendents, labor, material, equipment, and other means of construction to the Contractor; and the expense so charged shall be deducted and paid for by the Town out of the monies as may be due or become due at any time thereafter to the Contractor under this Contract, or any part thereof. In case such expense is less than the sum which would have been payable under this Contract, if the same had been completed by said Contractor, it is agreed that said Contractor shall be entitled to receive the difference; and in such case such expense shall exceed the sum which would have been payable under this Contract, if the same had been completed by said Contractor, then said Contractor shall pay the amount of such excess to said Town after notice of the excess is due.
- 11. TERMINATION FOR BREACH:** In the event that any of the provisions of the preceding paragraphs of this Contract are violated by the Contractor or any subcontractor on the Work, the Town may terminate the Contract by serving written notice upon the Contractor of its intention to terminate said Contract, and unless, within ten (10) days after the serving of such notice, violating shall cease, the Contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Town may take over the Work and prosecute the same to completion or otherwise for the account and at the expense of the Contractor and/or such subcontractor, and the Contractor and his sureties shall be liable to the Town for any excess cost occasioned to the Town in the event of such termination, and the Town may take possession of and utilize in completing of the Work such material, appliance, and plans as may be on the site of the Work and necessary therefore. This clause shall not be constructed to prevent the termination for other causes provided in the Construction Contract.
- 12. PATENTS:** The Contractor shall be responsible for all fees or claims for patented invention used by him, and shall defend any suit that may be brought against the Town, and shall hold said Town harmless for use or infringement of any patented thing or method, used in connection with the Work herein specified.
- 13. CONTRACT READ: COPIES: BOND AND INSURANCE:** It is agreed and understood that the Notice to Bidders, the Instructions to Bidders, the General Conditions, the Material Specifications,

and the Detail Specifications, the enumerated addenda and drawings are part and parcel of this Contract, to the same extent as if incorporated herein in full.

The Contractor hereby agrees that he has read each and every clause of this Contract and fully understands the meaning of the same, and that he will comply with all its terms. This agreement is to be executed in five (5) copies, one (1) copy to be delivered to the Contractor and four (4) to be retained by the Town. Each agreement is to contain a copy of the Performance Bond, Payment and Materials Bond, and Certificate of Insurance. Each agreement shall have an original signature.

IN WITNESS THEREOF, the parties have duly executed this contract as of the date first above written.

ATTEST:

By _____
Town Manager
Town of Huntersville, NC

Clerk to the Town Board

ATTEST:

By _____
Firm

SSN# or Fed ID #

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE
REQUIREMENTS:

Town Attorney

Finance Director

This instrument has been pre-audited
in the manner required by Local
Government Budget and Fiscal Control
Act.

By: _____
Director, Park & Recreation

Finance Director

Account Number