

**Wheeler Grading
Todd Wheeler
320 Tabernacle Road, Black Mountain, NC 28711
Phone (828) 776-0332**

Project Name: Providence Terrace

Customer: Town of Montreat

bcreasman@townofmontreat.org

Address:

Contact: Barry Creaseman

Phone: (828) 669-8002

Fax No.: (828) 669-3810

CONTRACT

This Contract is entered into as of this day, September 13, 2018 by and between Wheeler Grading ("Company") and Town of Montreat ("Customer"). Company and Customer agree to the following terms and conditions:

Real Property. Company shall provide the "Work" described in Description of Work below, which Work is to be performed with respect to that Real Property described below:

Description of Work. The Work to be provided by Company is as follows:

1. Removing existing dirt down to old culvert
2. Hauling off dirt and culvert
3. Replace and install existing headwall new concrete headwall
4. Supply and install washed stone to cover culvert
5. Supply and Install Dirty Road Bond to cover culvert
6. All related sewer work during project

sum=\$10,800

*Does not include lower head wall

*Any rock excavation will be extra as measured

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

62/11 9-17-2018

17-20-5600-737

Price. In consideration for Company performing the Work, Customer agrees to pay Company the **Contract Amount of \$10,800.00.**

Payment Terms. A deposit of \$ ~~1000~~ is required prior to the start of the Work. Full payment of the balance of the Contract Amount and any additional charges for other Change Orders is due to Company upon completion of the Work, and in no event later than 30 days after the invoice date. Time is of the essence with regards to all payments due from Customer to Company. If Company does not receive full payment of the Contract Amount within 30 days of the invoice date, Customer is in breach of this Contract. Upon breach, interest at the rate of 1 ½ % per month shall accrue on all amounts past due, from the first day the Customer is in breach until payment is made in full. Customer agrees to pay all interest assessed in accordance with this Paragraph.

Customer's Obligations. Customer acknowledges and agrees to the following:

- a. Customer can and will provide Company with adequate and direct access to the Real Property and to any adjacent property needed during the scope of the Work;

Change Orders & Modifications. Unless specifically stated elsewhere in this Contract, Company does not agree to any different or additional work, above and beyond the Work specified in Paragraph above, without a written Change Order, signed by both Customer and Company. All written Change Orders must specify the agreed upon price and description of the change to be made or the additional work to be completed. All written Change Orders signed by both Customer and Company become part of this Contract.

Limited Warranty. For a period of 365 consecutive calendar days from the date of completion of the Work, Company warrants the Work as follows: If there is a labor or material defect in the Work that is caused solely by Company, Company shall, at its own cost, correct such defective Work within a reasonable time after Company has actual knowledge thereof. If Customer becomes aware of any such defect, Customer shall deliver a written notice thereof to Company. Except for the foregoing, there are no other express warranties or implied warranties with respect to the Contract, Company's performance of the Contract, or the Work. All other express warranties and implied warranties are hereby disclaimed and excluded, including, but not limited to, all implied warranties for or of merchantability, habitability, fitness for a particular purpose, or workmanlike construction.

Insurance. Company shall maintain worker's compensation insurance covering all of its employees, as well as general commercial liability insurance throughout the scope of the Work.

Events of Default. Each of the following events shall constitute an Event of Default by Customer:

- a. If Customer files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy law, or voluntarily takes advantage of any such law or makes an assignment for the benefit of creditors;
- b. If an involuntary proceeding under any bankruptcy law or an insolvency or receivership action shall be instituted against Customer, or if a receiver or trustee shall be appointed for all, or substantially all, of the property of Customer, and such proceeding is not dismissed or the receivership or trusteeship is not vacated within ten days after the institution or appointment; and/or
- c. If Customer fails to fully perform any of Customer's Obligations as specified in Paragraph 6 above, or to comply with any provision of this Contract, including the payment provisions.

Limitation of Damages, Indemnification and Release. Customer acknowledges and agrees to the following:

- a. Company is not responsible for any damage to or deterioration of any of the Work, whether complete or in process, that results from any cause or causes beyond Company's control, including, but not limited to, failure of sub-grade, or failure or inadequacy of any labor or materials not installed or furnished by Company; and
- c. The sole and exclusive remedy of the Customer, and the sole and exclusive obligation of Company, for matters set forth herein, whether on contract, negligence or strict liability, is the repair of the defect. Company in no event shall be liable for special or consequential damages claimed by Customer.

Entire Contract. This Contract supersedes and replaces any proposals, amended proposals, conversations, estimates or other communications with respect to the Work. This Contract may be amended only by a written document signed on behalf of Company and Customer.

Choice of Law. This Contract is governed, interpreted and enforced pursuant to the laws of the State of North Carolina. Company and Customer agree that the jurisdiction for all disputes related to this Contract shall be either Buncombe County, NC or the county where the Real Property is located.

Execution of the Contract. Customer represents and warrants that he/she/it has read and understands the Contract and has had an opportunity to consult with legal counsel concerning its effect. No rule of construction shall apply to this Contract construing its provisions more strictly against either Company or Customer.

Severability. If any provision or portion of this Contract or any amendment hereto shall contravene or be invalid under any applicable law, statute, code, ordinance or regulation, such contravention or invalidity shall not invalidate the whole thereof, and this contract shall be construed as if not containing the particular provision or portion found to be invalid.

Assignment. This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and representatives. Customer may not assign this Contract without the written consent of Company. Company may assign or subcontract this Contract or any portion of the Work to be done. If assigned, this Contract shall be binding on the assignees and its successors, assigns, heirs and representatives.

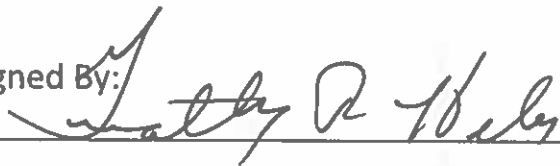
Customer:

Company:

Town of Montreat

Wheeler Grading

Signed By:



Wheeler Grading

By:



Print Name: Timothy R. Helms, Mayor

Todd Wheeler

Date:

9-17-18

Date:

9-13-18