

AGREEMENT

THIS AGREEMENT, made this the 21st day of January, 2019 by and between City of Beacon acting herein through its Mayor, hereinafter called "*OWNER*" and Beacon Residential, LLC, a corporation of the Town of Fishkill, County of Dutchess, State of New York, hereinafter called "*CONTRACTOR*".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the *OWNER*, the *CONTRACTOR* hereby agrees with the *OWNER* to: perform all work as specified in the plans for Green Street Park Improvements, hereinafter called the project, for the sum of: Eighty-Seven Thousand Eight Hundred Dollars (\$87,800.00) and all extra work in connection therewith, under the terms as stated in the General Conditions of the Contract; and at his (its or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the work in accordance with the conditions and prices stated in the Bid Form, Advertisement for Bids, the Information for Bidders, the General Conditions, Supplemental Conditions, and printed or written explanatory matter thereof, the specifications and contract documents therefor as prepared by One Nature, LLC, :herein after called "*PROJECT LANDSCAPE ARCHITECT* ", all of which are made a part hereof and collectively evidence and constitute the contract.

CONTRACTOR hereby agrees to complete the work under this contract by May 30, 2019. The *CONTRACTOR* further agrees to pay liquidated damages for each consecutive calendar day thereafter, in accordance with the schedule in the Information for Bidders.

OWNER agrees to pay the *CONTRACTOR* in current funds for the performance of the contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in the General Conditions. The *OWNER* shall retain 5% of each progress payment, in accordance with the provisions of the General Conditions and General Municipal Law, until final completion and acceptance of all work.

Prior to the commencement of construction, the *CONTRACTOR* shall meet with all known public and private utility companies occupying the work site. At this meeting the *CONTRACTOR* shall inform the utility companies of the *CONTRACTOR*'s schedule of operations and coordinate the *CONTRACTOR*'s work with these companies.

The *CONTRACTOR* specifically agrees that the *CONTRACTOR* has taken into account and included in the *CONTRACTOR*'s unit prices and lump sum prices bid, for various items of the contract, any additional cost of doing the work under this contract because of not having a clear site for the work, because of interference of roadway use by the utilities and because of the necessity or desirability of opening certain sections of pavement to traffic before the entire work is completed.

This agreement shall be construed and enforced in accordance with the laws of the State of New York.

AGREEMENT - continued

CONTRACTOR agrees:

A. To hereby voluntarily and irrevocably submit himself to the jurisdiction and venue of any court of competent jurisdiction over the subject matter of this contract located within the State of New York in which any litigation is brought based on or arising out of the Contract.

B. Any litigation brought by the *CONTRACTOR* based on or arising out of this Contract shall be brought only in the Supreme Court of the State of New York within the county in which the *OWNER* is located, trial to be without jury.

C. Any legal process or notice connected with any litigation may be served on the *CONTRACTOR* by U.S. registered mail, postage prepaid, addressed to the *CONTRACTOR* at his address stated in this Contract or at the address stated in this Contract for the furnishing of notices to the *CONTRACTOR* or at the *CONTRACTOR'S* last known address, and that service in such manner shall constitute good and valid service of process upon the *CONTRACTOR*.

D. The *CONTRACTOR* hereby waives any defense which might be available to it in any such litigation based on or alleging lack of jurisdiction or venue, or, if process is served in the manner provided in subparagraph (c) immediately above, invalid service of process, and that he will duly enter his appearance in any such action.

This contract shall be presented in court as conclusive evidence of the foregoing agreement.

The *CONTRACTOR* agrees that he/she/it will indemnify and save the *OWNER* harmless from all claims growing out of the lawful demands of sub*CONTRACTORS*, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, all supplies, including commissary, incurred in the furtherance of the performance of this contract. The *CONTRACTOR* must, at the *OWNER'S* request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the *CONTRACTOR* fails to do so, then the *OWNER* may, after having served written notice on the *CONTRACTOR*, either pay unpaid bills, of which the *OWNER* has written notice, direct, or withhold from the *CONTRACTOR'S* unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the *CONTRACTOR* shall be resumed in accordance with the terms of this Contract. In no event shall this be construed to impose any obligation upon the *OWNER* to the *CONTRACTOR*.

The acceptance by the *CONTRACTOR* of final payment shall be and shall operate as a release to the *OWNER* of all claims and all liability to the *CONTRACTOR* for all things done or furnished in connection with this work and for every act and neglect of the *OWNER* and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the *CONTRACTOR* of his/he sureties from any obligation under this Contract or any Performance and Payment Bond required hereunder.

AGREEMENT – continued

Defense of Action Suit – Neither the OWNER nor any of its officers or agents shall in any manner by answerable or responsible for any loss or damages that may happen to the work, or to any part or parts thereof, or to any materials, equipment or other property that may be used therein, or placed upon the ground, during the progress of the work. Neither the OWNER nor any of its officers or agents shall be in any manner answerable or responsible for any injury done, or damages or compensation required to be paid under present or future law, to any person or persons whatever, whether belonging to the OWNER or others, occurring during or resulting from the work. The CONTRACTOR shall indemnify and save harmless the OWNER, its officers, and agents against all such injuries, damages and compensation arising or resulting from causes other than that of the OWNER's negligence.

The CONTRACTOR shall, from the commencement of work until completion and acceptance thereof, maintain public liability insurance and property damage liability insurance in the amounts stated in this bid document for the protection of the CONTRACTOR and the OWNER, stamped by the insurer "Premium Paid". These policies shall be written by an insurance company or companies approved by the OWNER.

OWNER shall have the right to stop work or terminate the contract if:

- The CONTRACTOR is adjudged bankrupt or makes an assignment for the benefit of creditors.
- A receiver or liquidator is appointed for the CONTRACTOR or for any of his/her/its property and is not dismissed within 20 days after such appointment or the proceedings in connection therewith are not stayed on appeal within the said 20 days.
- The CONTRACTOR refuses or fails to prosecute the work or any part thereof with due diligence.
- The CONTRACTOR fails to make prompt payment to persons supplying labor for the work.
- The CONTRACTOR fails or refuses to comply with all applicable laws and ordinances.
- The CONTRACTOR is guilty of a substantial violation of any provision of the contract.

In any event, the OWNER, without prejudice to any other rights or remedy it may have, may by seven (7) days' notice to the CONTRACTOR, terminate the employment of the CONTRACTOR and his/her/its right to proceed as to the work. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work is complete. If the unpaid balance of the compensation to be paid to the CONTRACTOR hereunder exceeds the expense of completing the work, such excess shall be paid to the CONTRACTOR. If such expense exceeds such unpaid balance, the CONTRACTOR shall be liable to the OWNER for such excess.

It is hereby mutually covenanted and agreed that the relation of the CONTRACTOR to the work to be performed by him/her/it under this Contract shall be that of an independent CONTRACTOR. As an independent CONTRACTOR, he/she/it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said work, whether or not the CONTRACTOR, his/her/its agents, or employees have been negligent. The CONTRACTOR shall hold and keep the OWNER free and discharged of and from any and all responsibility and liability of any

sort of kind. The CONTRACTOR shall assume all responsibilities for risks or causalities of every description, for loss or injury to persons or property arising out of the nature of the work, from the action of elements, or from any unforeseen or unusual difficulty. The CONTRACTOR shall make good any damages that may occur in

AGREEMENT – continued

consequence or the work or any part of it. The CONTRACTOR shall assume all blame, loss and responsibility of any nature by reason of neglect or violation of and federal, state, county or local laws, regulations or ordinance.

The CONTRACTOR agrees to indemnify and save the OWNER, its officers, agents and employees harmless from any liability imposed upon the OWNER, its officers, agents and/or employees arising from the negligence, active or passive, or the Contract.

In accordance with the provisions of Section 109 of the General Municipal Law, the CONTRACTOR is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement, or his/her/its right, title or interest in this agreement, or his/her/its power to execute this agreement, to any other person or corporation without the previous consent in writing of the OWNER.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in four counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

BY: _____

(CONTRACTOR)

[Seal]

ATTEST:

BY: _____

(Mayor, City of Beacon)

[Seal]

ATTEST: