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EQUINOX
CONTRACT TO PROVIDE SERVICES

This Agreement is made and entered into as of the 14 day of ^{July} ~~May~~, 2019, by and between Equinox Environmental Consultation & Design, Inc., a North Carolina corporation ("Equinox"), and the Town of Woodfin ("Client").

In consideration of the mutual exchange of binding promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Engagement. Subject to the terms and conditions set forth herein, Equinox shall provide the services set forth on Schedule A, Scope of Services, which is attached hereto and incorporated herein by reference ("Services"). Landscape Architecture services will be provided by Equinox' affiliate E2 Landscape Architecture, PLLC. If Client shall desire to engage Equinox to provide additional services, the engagement contemplated herein shall be expanded to include those services listed on any Addendum to Schedule A as shall be signed by both parties, and any reference herein to "Schedule A" shall include any such Addendum to Schedule A.
- Compensation and Terms of Payment. Client shall pay Equinox the compensation set forth on Schedule A, ("Compensation"), and shall pay such Compensation in monthly installments amounts as invoiced. Client agrees to pay each monthly installment of Compensation within thirty (30) days of being invoiced for the monthly installment amount, which amount shall be representative of the percentage of the total Services performed during the invoice period. Interest at the rate of 3.5 % per month shall accrue on all invoices not timely paid. If payment is not received within 60 days all work will be halted until payment is received in full which will include payment of all past invoices. A revised work schedule will be provided once past due invoices are paid in full. Shall any amount due under paragraph 2 or 3 of this Agreement not be fully paid when due, Equinox may employ an attorney to enforce its rights and Client shall pay Equinox' reasonable attorney's fee and all applicable court costs.
- Termination. Client may terminate this Agreement immediately upon written notification to Equinox. Equinox may terminate this Agreement immediately if Client: (i) fails to make timely payment of Compensation as set out herein; (ii) fails to communicate with Equinox as specified in Schedule A; (iii) fails to comply with other responsibilities of Client set out in Schedule A. No termination shall alter or affect the right of Equinox to Compensation for Services performed prior to termination, which shall become immediately due and payable upon termination. In addition, Client acknowledges that Equinox, relying on the promises of Client set forth herein, has forgone other opportunities in the conduct of its business, and in consideration thereof, Client shall immediately upon termination of this Agreement pay Equinox 15% of Compensation remaining due on the date of termination.
- Performance. Equinox shall have the right to subcontract for the performance of any Services, and no such subcontract shall be considered an assignment for purposes of paragraph 7 of this Agreement, but Equinox shall see that all Services are performed in accordance with the terms hereof.
- Force Majeure. Equinox shall not be in default by reason of failure in performance of this contract if such failure arises out of causes beyond the control of Equinox that make the fulfillment of this Agreement impossible or impracticable.
- Work Product. Client acknowledges that, while performing Services, Equinox may prepare specifications, plans, reports, compilations of data, interpretations, advisory memoranda, and strategies ("Work Product"), and that, although copies of the Work Product may be delivered to Client, all Work Product shall

remain the property of Equinox to be used by Equinox at any time and for any purpose whatsoever, without permission from Client.

7. Release and Indemnification for Design Contracts. If the Client authorizes deviations, recorded or unrecorded, from the documents prepared by Equinox, the Client shall not bring any claim against Equinox and shall indemnify and hold Equinox, its agents and employees harmless from and against claims, losses, damages and expenses, including but not limited to defense costs and the time of Equinox, to the extent such claim, loss, damage or expense arises out of or results in whole or in part from such deviations, regardless of whether or not such claim, loss, damage or expense is caused in part by a party indemnified under this provision. If Equinox' services do not include Construction Oversight and Administration services, the Client shall be solely responsible for interpreting the contract Documents and observing the work of any contractor to discover, correct or mitigate errors, inconsistencies or omissions.

Equinox advised the client to conduct a Phase 1 Environmental Site Assessment (ESA). The Town of Woodfin has decided not to obtain a Phase 1 ESA and therefore hold harmless and releases Equinox and their sub consultants of any liability whatsoever if environmental contamination is found on the site at any time, now or in the future.

8. Waiver. No failure of Equinox to insist upon strict performance of any part of this Agreement shall in any way be construed as a waiver of any rights and no such failure shall prohibit or otherwise limit Equinox' right to subsequently insist upon strict performance of all of the terms hereof by Client.

9. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.

10. Representations and Warranties. Each party represents and warrants that this Agreement has been duly authorized and executed and constitutes the binding obligation of such party, his [It's] successors and assigns.

11. Notices. Any notice, invoice, or other document shall be effective upon placing the same in the US mail, postage prepaid, and addressed to the appropriate party at the following address:

To: **Equinox** **37 Haywood Street, Suite 100**
Asheville, NC 28801

To: **Client** Town of Woodfin
 Woodfin, NC 28804
 95 Elk Mountain Rd.

12. Governing Law. This Agreement and the rights of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

13. Entire Agreement. This Agreement contains the entire Agreement of the parties, and there are no representations, inducements, or other provisions other than those expressed in writing.

14. Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If



EQUINOX
balance through proper planning

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any provision of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

In Witness Whereof, each party hereto, if an individual has executed this Agreement, and if an entity has caused this Agreement to be executed by its duly authorized officer, as of the day and year first above written.

THE CLIENT

EQUINOX

Town of Woodfin

By: M. Jerry Uetkan
Print Name:

By: *M. Jerry Uetkan*
Signature

By: *David Tuch*
David Tuch, President

Date: July 14, 2019

Schedule A: Scope of Services

Equinox will lead the project and provide design development, construction documents, and construction observation services. We are joined by firms with a focused and specific role to ensure a successful project. This includes Kee Mapping & Survey (Survey), Stantec (Hydraulic Modeling/Flood Study for the boat ramp and removal of a section of the levee), PFA Architects (architecture for the pavilion and the train platform), S2o (Boat Ramp Design and Bank Stabilization) and McGill Associates (Utility Design).

SURVEY & SITE ASSESSMENT

Wetland and Stream Delineation - Our team will perform a stream and wetland delineation to determine the extent of streams and wetlands on the property using methods developed by the U.S. Army Corp of Engineers (USACE) and the North Carolina Department of Environment and Natural Resources' Division of Water Resources (NCDWR). Equinox will coordinate, prepare, and submit an Approved Jurisdictional Determination (Approved JD) to the USACE and NCDWR for review. This objective includes communication with the USACE as well as an on-site verification of jurisdictional resources. The boundary of the wetland will be part of the survey.

Survey- A topographical survey depicting 1ft contour intervals of the entire site and property boundary (the 4.48-acre and 0.93-acre owned land) will be provided and meet all of the requirements in the RFP. In addition, we will provide an underwater topographic survey of area along the French Broad River to extend 15' from edge of water into river along southern property line and 75' from edge of water into river and for 200' paralleling the bank in the proposed boat ramp area. This information will be critical for the design of the boat ramp as it extends into the river and for the design and engineering of the riverbank including the removal of the levee. As part of the survey work the following is also included:

- Utilities
- Trees 18" and greater
- All existing structures and improvements within survey area including the finished floor elevation (lowest level) of the Republic Services (**critical to know the impacts to this building and the existing Doggie Day Care facility if the levee/berm along the river is removed**).
- Wetlands, streams, ditches
- Three (3) FEMA cross sections to extend +/-100 feet from the river top of bank (needed for hydraulic modeling) and one re-survey post construction.

Geotechnical- The soil will be tested using hand augers to evaluate soil conditions. This will be provided specifically for the levee to ensure the soil can be used on site including under the parking lot. Since the parking area is located adjacent to the wetland, our geotechnical engineers will

provide a pavement section design to accommodate the wet conditions and to help prevent long-term maintenance issues.

Equinox recommended a Phase 1 ESA be conducted for the property, the cost for this service is not included in this scope of services.

STEERING COMMITTEE & STAKEHOLDER COORDINATION

Coordination with Utilities (Duke Energy, MSD) - MSD will require review of the plans at the 60% level and the final construction details because the park crosses the 60-66 inch sewer main line. Duke Energy will need to review plans as well, because they have a high transmission line with significant restrictions that will need to be addressed in the design of the park.

Coordination with Craggy Mountain Rail Line and Norfolk Southern Railway- To avoid the costly and time-consuming process of engaging Norfolk Southern Railway, Equinox proposes keeping all impacts contained within the previously impacted areas of the existing parking lot and the existing width of the entrance driveway. In addition, we will work with the owner of the Craggy Mountain Line who is important to the success of the larger greenway project. Our team has already had positive discussions with the owner and maintaining the continuity of this relationship may help when designing park areas adjacent to the rail line. Design elements that may be desired for the train platform will be discussed and reviewed with the owner of Craggy Mountain Rail Line and the Town of Woodfin.

Coordination with NC DOT- An NCDOT driveway permit will be required if a new driveway access is provided off Riverside Drive. Equinox will obtain a permit if this is needed.

Coordination with Environmental Regulatory Offices- Just as with NC DOT, the same people we are talking with regarding the greenway will also be reviewing the park project due to the boat ramp and riverbank work. This includes the US Army Corps of Engineers, NC Division of Water Quality, NC Wildlife Resource Commission, State Historic Preservation Office and US Fish and Wildlife Service. Based on our greenway work we know what permits will be needed. We will meet with these agencies to review the project and to help us move through the environmental permitting process.

Steering Committee – A technical advisory committee should be developed to help make key decisions regarding the project as they emerge through the design process. Equinox will work with the Town of Woodfin to develop a committee of 3-5 people (including key Town staff) to meet as needed.

DESIGN DEVELOPMENT

Site Plan- A site plan will be developed that refines the Master Plan with all key design features requested by the Town of Woodfin and that meets Duke Energy, MSD, NC DOT and Craggy Mountain Line requirements. Prior to the development of the Site Plan, Equinox will meet with the Town of Woodfin to review the Master Plan and determine if any changes to the Master Plan are desired from the Town. We will also discuss phasing ideas at this time. Any changes will be reflected in the Site Plan. Please note that our team has evaluated the Master Plan previously developed and have

identified a few changes that will be needed. This task will also include coordination with Playworld or another playground manufacturer that specializes in nature based playgrounds to determine spatial needs and selection of the play equipment. Once the site plan is revised, a meeting will be scheduled with the Town of Woodfin to review the final site plan including updated cost estimates and a phasing plan if not all the construction will occur at one time. If construction will not occur all at once, the items that will be built in the initial phase of construction will be fully designed first, so construction activities can begin earlier in the process. All plans will be provided to the client in a digital format.

60% Plan Set- This will include the design for the entire park including all the design features and amenities such as the following:

- Concrete boat ramp
- Asphalt parking
- Asphalt greenway trail
- Greenway trailhead kiosk
- Playground
- Bike rack on concrete pad
- Benches
- Boardwalk through the wetlands
- Concrete sidewalks and pathways
- Temporary restroom facility
- *River access areas
- Lawn area
- Garbage & recycling receptacles
- Grills
- Bench & Swing
- Picnic tables on concrete pads
- Pavilion with stage
- Train platform
- Water spigot
- Dog waste collection station
- 3-Interpretative signage design

River Access, Riverbank Engineering, and Wetland Enhancements- These three elements make this park unique. A preliminary grading plan will be developed at this time for use for the hydrologic modeling. This will include the preliminary design for the riverbank stabilization and restoration, removal of the levee, the boat ramp, the greenway, and parking area. Equinox's cost proposal includes creating river access with boulder terraces for a length of approximately 200-300 linear feet along the French Broad River and grading the levee to create a visual connection with the rest of the park. This will include a revegetation plan to stabilize the riverbank (a critical step in the design process) and restore habitat along the riverbank of the French Broad River, which the permitting agencies will require.

Illustrative Plan – A graphic rendering for the park will be developed at the end of this phase of the project and a public open house and Town Board presentation will be provided. The rendering will be a plan that can be provided for public use and to help the community visualize what will be built at the park.

CONSTRUCTION DOCUMENTS & PERMITTING

Construction Documents- Final plans will be developed after the 60% plan set has been approved. The construction plan set will include the following drawing sheets:

- Cover Sheet
- Survey
- Site Plan
- Electrical Site Plan
- Layout & Materials Plan
- Grading, Stormwater & Erosion Control
- Planting Plan/Restoration Plan
- Utility Plans
- Wetland Enhancement Plan
- Architectural Plans
- Construction Details

Once the final construction set is complete, a final cost estimate will be developed. Specifications will also be developed. All plans and specifications will be provided to the client in a digital format.

Architectural Design- Our team will take the information outlined in the Master Plan as well as any additional information provided by the Town of Woodfin, and propose pavilion and train platform design options based on the functional and aesthetic needs we learn from the town. These options will be presented in 3-D models so that the town can experience the structures from many sides and viewpoints. Based on feedback, we will refine the preferred option. This includes working with a structural engineer or heavy timber provider to create construction documents from which the General Contractor can bid and build the structures. Please note that the design fee for the architectural work is based off a construction cost of \$110,000 for the pavilion/stage and \$50,000 for the train platform as identified in the Master Plan.

Flood Study - An initial site investigation will be conducted to establish an understanding of the existing site conditions. The site investigation will include a project kickoff meeting with the Town of Woodfin to discuss the proposed design and site constraints. Our team will request from FEMA the current HEC-RAS model of the published flood study and use previously developed information from S2o Engineering. We will coordinate with the surveyor regarding the location and limits of the required river cross sections. We will prepare an existing model and a corrected effective model based on the provided data.

Once the riverbank and boat ramp are designed then the proposed hydraulic model will be developed. It is anticipated that proposed bank grading activities will result in either a no-rise condition or a lowering of the base flood by less than one foot. We will coordinate with the local floodplain administrator and then submit a No-Rise certification along with the required supporting information. In the event that the proposed design affects a rise in the base flood elevation FEMA will require a Conditional Letter of Map Revision (CLOMR) submittal that is not included in this scope of work. However due to our past investigation and involvement in the Master Plan, we anticipate the design will result in either a no-rise or lowering of the base flood by less than 1 ft. which will avoid requirement of a CLOMR and limit the FEMA submittal to a post-construction Letter of Map Revision (LOMR).

Included in the scope is the work necessary to modify the hydraulic model and prepare the required documentation for the LOMR submittal to FEMA. This scope of work includes submittal of the LOMR and the submittal fee of \$8,000 to FEMA. The Contractor will coordinate with the local floodplain administrator and then submit a No-Rise certification along with the required supporting information. In the event that the proposed design affects a rise in the base flood elevation FEMA will require a CLOMR submittal, which is not included in this scope of work.

Flood Study Assumptions

The following assumptions have been made in the development of this scope of work:

- 1.) FEMA or others will provide a working HEC-RAS model of the latest published flood study.
- 2.) The project design will result in either a no-rise or lowering of the base flood by less than 1 ft. which will avoid requirement of a Conditional Letter of Map Revision (CLOMR) and limit the FEMA submittal to a post-construction Letter of Map Revision (LOMR).

Flood Study Design Considerations

- 1.) Based on ncfloodmaps.com, the project stream has a FEMA regulated floodway and will require a map revision submittal.
- 2.) Subsurface conditions along the bank of the French Broad River are unknown.

Additional Permitting – Our team will obtain permits for construction such as an NC DOT driveway permit, 401/404 permits, Nationwide permits, and sediment and erosion control permits. Please note this scope does not include an Individual Permit or the process to obtain an Individual Permit if it is deemed necessary by the US Army Corps of Engineers.

BIDDING & CONSTRUCTION OBSERVATION

Bidding- Our team will develop Bid Documents and take offs for bidders to complete as part of the bids submitted to the Town of Woodfin. Equinox will also provide at least two (2) contractors that have the expertise to bid on the project to which the Town may send the bid document. The Town of Woodfin would collect all requests for information (RFIs) about the Contract Documents and Equinox will respond at one time during the bidding process to the RFIs. All plans and specifications will be provided to the client in a digital format.

Construction Observation- Our team shall visit the site at intervals appropriate to the stage of construction and anticipates the following:

- One (1) Pre-Bid Meeting,
- One (1) Pre-Construction Meeting,
- Ten (10) to twelve (12) site visits at key times during construction,
- Three (3) site visits to oversee river access and riverbank work,
- One (1) Substantial completion meeting (punchlist), and
- One (1) Final punchlist walk through with the client

Each site visit/meeting will include a summary report. Equinox will also respond to additional requests for information from the contractor during construction. If the Town is in need of construction

EXCLUSIONS:

Any service not described herein will be considered an additional service and require authorization from the Town of Woodfin prior to commencement of work. Specific items not included in the scope of services:

- Phase 1 ESA or other NEPA related planning.
- Permit Application Fees other than LOMR/FEMA permit fee which may or may not be needed such as (NC DOT Driveway Permit, 401/404 Water Quality Certification Permit/Nationwide Permit, Erosion Control/Land Disturbance Permit, etc.).
- Utility relocation design as this is not anticipated to be needed.
- Please note that a Nationwide permit from the USACE is included in the cost permitting for an Individual Permit is not included if this is required by USACE as this process takes significant time and resources. Equinox will work with the regulatory agencies to avoid an Individual Permit
- Construction Observation beyond what is included in the Scope of Services. This service may be needed if the Town does not have the capability or manpower to manage the construction process by providing daily site visits and review of workmanship.

COMPENSATION:

Equinox is contracting with the Town of Woodfin for the services outlined in the "scope of services" for a fixed fee of **\$265,235**. Equinox shall satisfactorily perform all the work tasks as outlined in the "scope of services". This cost estimate includes expenses such as copies, mileage, printing, and postage. Equinox bills on a monthly basis and invoices will be mailed typically by the 25th of each month with a payment due date by the 10th of the following month. Invoices that are not paid within 30 days will be assessed a \$35.00 late charge for each pay period or 3.5% interest whichever is greater.