

WHEN RECORDED RETURN TO:

Pam DeMouth, City Clerk
City of Ankeny
410 W. First St
Ankeny, IA 50023

Preparer Information: Paul Moritz, 410 West First St., Ankeny, Iowa 50023

(515) 965-6420

SPACE ABOVE THIS LINE FOR RECORDER

**COST SHARING AGREEMENT BY AND BETWEEN THE CITY OF ANKENY, IOWA AND
1600 CORPORATE WOODS, LLC FOR CONSTRUCTION OF TURN LANE IMPROVEMENTS
ON SE CORPORATE WOODS DRIVE**

WHEREAS, the City of Ankeny, Iowa (the “City”) and Baker Mechanical, Inc. d/b/a Baker Group (“Baker”) entered into that certain Tax Increment Development Agreement dated May 16, 2016, recorded June 1, 2016, in Book 16024 at Page 415 of the records of the Recorder for Polk County, Iowa, regarding the development of a 135,000 square foot office and manufacturing facility for Baker (“Baker Facility”); and

WHEREAS, Corporate Woods Business Park Plat 3, dated July 8, 2016, recorded August 4, 2016 in Book 16121 at Page 13 of the records of the Recorder for Polk County, Iowa includes Lot 1, the future location of the Baker Facility, with said lot having frontage upon S.E. Convenience Boulevard and S.E. Corporate Woods Drive; and

WHEREAS, 1600 Corporate Woods, LLC (the “Company”) will be constructing certain improvements to S.E. Convenience Boulevard and S.E. Corporate Woods Drive, respectively, as depicted in the Public Improvement Plans for Corporate Woods Drive Turn Lane Improvements in Exhibit “A” attached hereto, which will be mutually beneficial to Baker and the motoring public; and

WHEREAS, the scope of work for the subject Corporate Woods Drive Turn Lane Improvements Project (“Project”) includes mobilization, earthwork, pavement and sidewalk removal, rock subbase, new street pavement, new realigned sidewalks, erosion control, traffic control, street light relocation, emergency siren relocation, pavement markings, and associated improvements, of which the City portion of the Project, which is designated as Division 1 in the Contract Documents dated February 9, 2017 by and among GTG Construction, LLC, the Company and the City for the Project, will cost approximately \$92,851.00 (\$85,351.00 for Division 1 improvements + \$7,500.00 (approximate) for emergency siren relocation); and

WHEREAS, the City and the Company agree to share in the costs of the Project with reimbursement from the City to the Company in the amount of \$85,351.00 (\$92,851.00 total City cost - \$7,500.00 (approximate) for emergency siren relocation which is 100% City cost) after the Company completes the Project as part of their site plan construction during the spring or summer of 2017, weather permitting, and the City Council for the City of Ankeny, Iowa (“City Council”) accepts the subject

improvements.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the Company and the City hereby agree as follows:

1. The Company agrees to construct the Project during the spring or summer of 2017, weather permitting, in accordance with the plans set forth in Exhibit "A."

2. The City agrees to pay the Company the sum of \$85,351.00, which is the City's proportionate share of the Project that includes the widening of S.E. Corporate Woods Drive to create the second left turn lane at the intersection with S.E. Convenience Boulevard as depicted in Exhibit "A." The reimbursement amount is based on estimated Project quantities and bid prices received by the Company. The City's reimbursement to the Company shall be based on actual as-built Project quantities to be provided by the Company to City. Reimbursement shall occur after completion of the Project by the Company and acceptance of the Project by the City Council.

A certificate of occupancy (CO) for the building shell, foundation, and site improvements for the Baker Facility shall not be issued until after all other site conditions have been inspected and approved and the Project has been accepted by the City Council. A CO for the office and warehouse portions of the Baker Facility may be issued prior to completion of the Project; however, the Company shall provide the City with executed construction contracts for the Project prior to the City issuing a CO for the office portion of the Baker Facility if a CO is requested prior to completion of the Project.

3. This Cost Sharing Agreement ("Agreement") shall be governed by the laws of the State of Iowa.

4. In the event a party hereto fails to pay its obligations under this Agreement or breaches a covenant, warranty or representation of this Agreement, the other party shall provide to the defaulting party written notice of the default and of the actions necessary to cure the default. If the default is not cured within 30 days from the date of notice, the non-defaulting party may exercise all remedies available at law, or in equity, including specific performance.

5. This Agreement contains the entire agreement between the parties. This Agreement may not be changed or modified in any manner, unless a written instrument is executed by the parties.

6. The undersigned officers of the parties covenant and confirm that this Agreement has been approved, and its execution authorized, by the Company and the City Council, and that the undersigned officers have been authorized to enter into and execute this Agreement on behalf of the Company and the City.

7. The City has determined that this Agreement serves and accomplishes a public purpose and is in the best interests of the City and its citizens and residents.

8. The Company agrees that this Agreement shall be effective and binding from and after the approval hereof by resolution of the City Council and shall be binding on any and all subsequent titleholders, transferees and assignees.

9. All notices or requests under this Agreement shall be given by certified mail, postage prepaid, return receipt requested, by overnight mail or by hand delivery, to the addresses shown below:

City of Ankeny:

City of Ankeny
410 West First Street
Ankeny, IA 50023
Attn.: Paul Moritz, P.E.

1600 Corporate Woods, LLC:

1600 Corporate Woods, LLC
4224 Hubbell Avenue
Des Moines, IA 50317
Attn.: B.J. Baker

Each properly addressed notice or request sent by certified mail shall be deemed given and served upon being actually received by the addressee or being rejected by the addressee. Notices sent by overnight delivery shall be deemed given and served upon actual receipt by the addressee or rejection by the addressee.

10. This Agreement supersedes the agreement by and between the City and the Company approved July 5, 2016 and recorded August 11, 2016 in Book 16130 at Page 64, in the records of the Recorder for Polk County, Iowa.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their duly authorized representative on this the ____ day of February 2017.

1600 Corporate Woods, LLC

By: _____
B. J. Baker, Manager

CITY OF ANKENY, IOWA

By: _____
Gary Lorenz, Mayor

Attest:

By: _____
Pamela DeMouth, City Clerk

STATE OF IOWA, COUNTY OF POLK, ss:

On the _____ day of February, 2017, before me, a Notary Public in and for the said State, personally appeared **B. J. Baker**, to me personally known, who, being by me duly sworn, did say that that person is Manager of said limited liability company; that no seal has been procured by the said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its members and the said **B.J. Baker** acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

Notary Public in and for said State of Iowa

STATE OF IOWA, COUNTY OF POLK, ss:

On the _____ day of February, 2017, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **Gary Lorenz** and **Pamela DeMouth**, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Ankeny, Iowa, a municipal corporation; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and contained in the Resolution adopted by the City Council of Ankeny, Iowa, on the _____ day of February, 2017, and the said **Gary Lorenz** and **Pamela DeMouth** acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa