

TOWN OF SUNSET BEACH
SUNSET BEACH TOWN PARK
Town of Sunset Beach, North Carolina

AGREEMENT

This Agreement made and entered into this _____ day of _____, 2013, by and between the Town of Sunset Beach, hereinafter called the TOWN, and Withers & Ravenel, Inc., hereinafter called the CONSULTANT, and said agreement to be hereinafter referred to as the AGREEMENT. Withers & Ravenel will also be using GeoTechnologies Inc. P.A. for geotechnical exploration and Alpha and Omega for structural engineering. These firms are sub-consultants on the PROJECT and may also be referred to as CONSULTANT in the AGREEMENT.

WITNESSETH

THAT WHEREAS, the TOWN desires to construct its first park facility along Sunset Boulevard with the 2012 Parks and Recreation Trust Fund Grant and Town monies. The previously purchased park site sits on 5 acres and has had a master plan completed for the site consisting of a covered seating area, renovated pier, observation deck, walking trails, informational signage / kiosk, restroom building and parking area.

All of which shall hereinafter be referred to as the PROJECT, and

WHEREAS, the TOWN desires to engage the CONSULTANT to provide professional design and engineering services for the PROJECT and to establish the scope of professional engineering services to be performed by the CONSULTANT, and the payment for said services to be made by the TOWN.

NOW THEREFORE, the TOWN and the CONSULTANT in consideration of their mutual covenants and agreements set forth hereinafter do agree as follows:

A. SCOPE OF SERVICES

The CONSULTANT shall furnish the following Scope of Services for the Sunset Beach Park PROJECT, consisting of a ± 2,000 square foot covered seating area, ± 200 square foot observation deck, ± 2,359 linear feet of walking trails, ± 487 linear feet of boardwalk, (4) educational kiosks and signage, an approximate 20' x 20' restroom building, (8) "Southport Swings", ± 43 parking spaces, an open lawn area, park signage, site amenities, park utilities, minimal landscaping, and a renovated pier.

Section I. Environmental Delineation Services & Field Survey

Section I - Delineations

A) Wetland Delineation

CONSULTANT will conduct a site review to determine if the PROJECT site contains jurisdictional wetlands. Jurisdictional wetlands will be determined using criteria set forth in the 1987 US Army Corps of Engineers (USACE) Wetlands Delineation Manual and 2008 Atlantic and Gulf Coastal Plain Regional Supplement. CONSULTANT will delineate all jurisdictional wetlands and starting point of streams in the field using sequentially numbered Wetland Delineation flagging. Wetland flags and stream start point flags will be located using a Trimble GeoXH mapping grade GPS unit. The GPS data will be used to prepare a Preliminary Wetland Exhibit, which will be provided to the TOWN for preliminary planning purposes. A copy of the Preliminary Wetland Location Exhibit will also be provided to a local surveying firm that is familiar with the TOWN to facilitate location of the wetland flags in the field.

B) CAMA Wetland Delineation

The boundaries of all coastal wetlands landward of the Mean High Water Line (MHWL) subject to Division of Coastal Management (DCM) jurisdiction under the NC Coastal Area Management Act (CAMA) will be delineated and marked in the field with surveyors flagging and sequentially numbered.

C) DCM Wetland Verification

If CAMA wetlands are identified above the MHWL, a request will be prepared and submitted to the NC Division of Coastal Management (DCM) to request a site visit to verify the CAMA wetland line. CONSULTANT will coordinate with DCM to schedule the site visit and accompany DCM when verifying the CAMA line. Any changes to the location of the CAMA wetland line will be communicated to the surveyor for incorporation into the survey.

Section I **COORDINATION ITEM - Additional Surveying (provided by TOWN)**

The TOWN will have additional survey completed for the PROJECT area to incorporate items identified under Task 1 and identify additional information as necessary. Additional survey may also include but not be limited to identifying information relating to boundary survey, topographic survey, above and below grade utility information, tree location survey to include species and caliper size, Right-of-Way information and all visually-apparent above ground existing site features. The task will be completed by a local surveying firm that is familiar with the TOWN. The survey will be for the sole purpose of developing construction documents for the PROJECT.

Section II - Preliminary Design

Section II Task 1 - Project Meetings

Up to two (2) meetings will be held with the TOWN throughout the preliminary design phase of the PROJECT. The CONSULTANT will meet with the TOWN to initiate the PROJECT with a design kick-off meeting. During this meeting, the CONSULTANT will introduce all key PROJECT team members and establish lines of communication between staffs. The CONSULTANT will also review the Scope of Services, the project schedule, the Town review process, and project meetings.

Section II Task 2 - Refine Master Plan

The CONSULTANT will develop a base file for the PROJECT. The base file will contain all survey information for the PROJECT, including information provided under Task 1 and Task 2. The CONSULTANT will insert the Park Master Plan into the Base File to indicate trails, boardwalks, the covered seating area, restroom building and all other site amenities identified on the adopted master plan, evaluating the location of proposed amenities and reducing site impacts where practicable.

The CONSULTANT will review any required plan adjustments with the TOWN.

The CONSULTANT and TOWN will discuss the proposed restroom building, making determinations on the building's program and architectural style to identify an appropriate prefabricated product or architect for a stick-built building.

Section II Task 3 - Develop Preliminary Master Plan Construction Cost Estimate

By utilizing the refined park master plan and current market conditions, the CONSULTANT will update the PARTF construction cost estimate for all park amenities, including grading, parking lots, covered picnic area, walking trails and all support facilities/utilities.

Section III - Final Design

Section III Task 1 - Project Meetings

Up to two (2) meetings will be held with the TOWN throughout the final design phase of the PROJECT. The CONSULTANT will review PROJECT progress, design plans and PROJECT specifications with the TOWN at these meetings.

Section III COORDINATION ITEM – Sub-consultant Information Gathered

GeoTechnologies Inc. will conduct geotechnical explorations at the final building location and the trail location (to be staked via GPS) for use by third party vendors to perform foundation design of the prefabricated building, the boardwalk system, the covered seating area structure, the observation platform, as well as to determine the sub-base required for trail design.

Alpha & Omega will provide additional information as needed for the boardwalk, covered seating area, observation platform, and pier renovation. The CONSULTANT will coordinate with SUBCONSULTANTS to utilize this information in the final design.

Section III Task 2 - Prepare Final Site Construction Drawings

The CONSULTANT will prepare detailed construction drawings for the PROJECT. The drawings shall include but not be limited to:

- **Existing Conditions Map** - (from survey information provided by the TOWN and from information provided from Task 1)
- **Layout & dimension Plan** – CONSULTANT will prepare a Layout & Dimension (Staking) Plan showing horizontal layout of the site with materials, dimensions, and amenities called out.
- **Grading Plan** - CONSULTANT will prepare a Grading and Drainage Plan for the project site showing existing and proposed one-foot contours, final spot grades for proposed storm sewer system and directional drainage.
- **Erosion & Sedimentation Control Plan** - CONSULTANT will prepare an Erosion Control Plan to include the location and sizes of all proposed temporary erosion control measures, such as sediment traps, silt fence, and diversion ditches as required by the
- **Stormwater Management Plan** - CONSULTANT will prepare a stormwater master plan which will accommodate the new impervious areas to be treated. It is anticipated that the existing stormwater BMP on the southwest corner of the property will not be able to accept the proposed drainage so pervious pavement will be proposed for treatment and detention.
- **Utility Plan** - CONSULTANT will provide plan showing water, sewer, stormwater and electrical service to the site.
- **Landscape Plan** – CONSULTANT will provide plan showing enhanced landscape for the site, including locations, plant species, and quantities.
- **Planting and Construction details** – CONSULTANT will prepare detail sheets showing the trail typical section, water, sewer, drainage and erosion control details required for civil site construction. These details will be based on local standards, State standards, and locally accepted construction details.
- **Plan & Profile Sheets** – CONSULTANT will prepare profiles of site trails along with detailed spot elevations.
- **Restroom Building Plans** - The CONSULTANT will collect sample plans for the prefabricated restroom building for review with the TOWN and final product selection. If the

TOWN wishes to hire an architect for the building, any coordination and meetings will be considered an additional service to be billed on an hourly basis by the CONSULTANT.

Section III Task 3 - Prepare Project Specifications

The CONSULTANT will prepare written technical specifications covering equipment, materials, and construction for those park amenities designed by the CONSULTANT. Specifications will employ the standard specification format following the CONSULTANT Joint Contracts Documents Committee (EJCDC) guidelines, Construction Specification Institute (CSI) format or Master Spec format.

Section III Task 4 - Prepare Construction Contract Forms

The CONSULTANT will prepare front-end documents associated with advertising, bidding, and construction contracts. The front-end documents will include Notice to Bidders, Instructions to Bidders, Proposal or Bid Form, Contract forms, Performance and Payment Bond forms, General Conditions, and Supplemental Conditions. The CONSULTANT will incorporate into the front-end documents pertinent forms of the TOWN as appropriate.

Section III Task 5 - Pre-Application Meeting with NCDCM

CONSULTANT will coordinate with NC Division of Coastal Management (NCDCM) to schedule a pre-application meeting with the reviewing Agencies in order to address any comments/questions/concerns regarding the design/construction of the proposed park.

Section III Task 6 - TOWN Plan Review

After all comments from Task 14 have been addressed, 90% Construction Drawings, specifications, and details will be submitted to the TOWN for review. Following the TOWN's review, the CONSULTANT will answer questions and address comments from the Town.

Section III Task 7 - Finalize Construction Drawings and Permit Applications

Based on the TOWN comments received from the 90% review, final Construction Drawings and Specifications will be prepared.

Permit applications will be prepared and submitted for review by appropriate agencies as needed. Permitting agencies include:

- Brunswick County - Stormwater review;
- TOWN Building Inspector review;
- TOWN Site Plan Review by Planning Staff and Planning Board as required;
- NCDOT - driveway connections;
- Erosion Control documents to NCDENR
(TOWN will be responsible for paying all permitting fees).

Based upon the final amount of site disturbance, one of the following applications will be submitted.

- **Preparation and Submittal of CAMA Minor Permit Application** (Less than 1.0 Acres of Disturbance) CONSULTANT will prepare and submit the CAMA Minor Permit Application for construction within the 75' AEC of the proposed park, as well as a General Permit for the renovations to the existing pier. After submission of the application, CONSULTANT will coordinate with NCDCM to resolve any issues with the proposed project and facilitate issuance of the CAMA Permits. (Estimated 3 week review time)

OR

- **Preparation and Submittal of CAMA Major Permit Application** (Greater than 1.0 Acres of Disturbance) CONSULTANT will prepare and submit a CAMA Major Development Permit Application and all supporting documentation, including Public Notice information, to the NC Division of Coastal Management. CONSULTANT will attend up to 2 meetings to address any comments/concerns received during the Public Noticing period. CONSULTANT will prepare and submit up to 2 responses to any Additional Information Requests from the NC Division of Coastal Management.
- **Adjacent Property Owner Notification** In accordance with CAMA regulations, the proposed project will require that the applicant notify the adjacent property owners of the proposed construction. CONSULTANT will prepare and distribute the notification information to the adjacent property owners via certified mail to satisfy this requirement.

Section III Task 8 - Prepare Final Construction Cost Estimate

The CONSULTANT will prepare an Engineer's Estimate for Probable Construction Costs based on the final Construction Drawings.

PROJECT element costs produced by a third party shall be provided to the CONSULTANT so they can be incorporated into the Construction Document set.

Section IV - Bidding

Section IV - Bidding of Project

CONSULTANT will Provide Services to the TOWN During the Bidding Phase as Follows:

- Prepare the advertisement for bid for review by the TOWN. (The TOWN will be responsible for paying for all advertisement fees and designating what formats to utilize;
- Reproduce construction bid documents and distribute to interested bidders and suppliers, and selected offices and plan rooms;
- Compile and maintain a record of prospective bidders;
- Schedule and conduct the pre-bid conference;
- Address Contractor questions/comments with regard to the bid documents;
- Prepare addenda, as necessary, to address changes to the bid documents. Addenda or addenda items requested by or necessitated by changes made by the TOWN following the initial bidding may be considered an additional service to be billed on an hourly basis by the CONSULTANT;
- Attend and conduct the bid opening;
- Make recommendation for award of contract;
- Prepare construction contract documents to be executed by TOWN and Contractor;

With respect to bid administration, the CONSULTANT will comply with North Carolina Law in conjunction with the TOWN's Attorney. Potential bidders will be charged a fee for obtaining construction bid documents to offset the reproduction costs.

* If re-bidding of the PROJECT is necessary due to an insufficient number of bidders, a bid irregularity, or at the desire of the TOWN, it will be considered an additional service to be billed on an hourly basis by the CONSULTANT.

Section V - Construction Administration

Section V Task 1 - Arrange and Attend Pre-Construction Conference

The CONSULTANT will assist the TOWN with a pre-construction conference. The CONSULTANT will assist in selecting the time and date, and then the CONSULTANT will contact the Contractor or Contractors regarding the conference. During the conference, the CONSULTANT will review procedural guidelines for the PROJECT and address specific PROJECT requirements. Among the items the CONSULTANT will discuss include:

- Correspondence distribution;
- Shop drawing and schedule procedures;
- Critical schedule requirements;
- Payment procedures;
- Staging areas;
- Emergency procedures;
- Survey control requirements;
- Quality control measures;

The CONSULTANT will prepare and distribute minutes of the pre-construction conference to all meeting attendees.

Section V Task 2 - Issue Notice to Proceed

Following execution of the Agreements by the TOWN, the CONSULTANT will prepare the construction Notice to Proceed. The CONSULTANT will confer with the TOWN and the Contractor or Contractors in selecting the Notice to Proceed date and, when directed by TOWN staff, the CONSULTANT will issue the Notice to Proceed to the Contractor or Contractors.

Section V Task 3 - Review Shop Drawings and RFI's

The CONSULTANT will review and approve shop drawings, Requests for Information (RFI's), certification sheets, samples, test results, inspection results, and other submittal data required of the contractor. The CONSULTANT review will ensure the contractor's or contractors' compliance with the information given in the contract documents.

Section V Task 4 - Attend Progress Meetings

During the construction period, the CONSULTANT will conduct a progress meeting each month with the contractor or contractors. At these meetings, the CONSULTANT will review with the contractor issues such as

- Schedule status;
- Coordination problems;
- Design issues;
- Pending change orders;
- Outstanding shop drawings and other required submittal data;
- Procurement delays;
- Pay Requests;
- Other issues related to completion of the PROJECT.

The CONSULTANT will maintain minutes of each meeting. The CONSULTANT will then prepare and distribute meeting minutes.

Section V Task 5 - Conduct Substantial Completion Inspection

When advised by the contractor that the PROJECT is substantially complete as defined in the Contract Documents, the CONSULTANT will perform an inspection of the project. The CONSULTANT will note items of work that require correction. The CONSULTANT will issue to the contractor and the TOWN a punch list of items requiring correction, and possibly items of work remaining, to qualify for final inspection. The CONSULTANTS' construction inspector will monitor completion of the punch list items.

Section V Task 6 - Conduct Final Inspection

When the contractor advises the CONSULTANT that he has completed the work required by the contract documents, the CONSULTANT will schedule a final inspection. As with the inspection for substantial completion, the CONSULTANT will document those items of work remaining in order to complete the PROJECT. The CONSULTANT will send copies of the final punch list to the contractor and the TOWN. When the final punch list work is complete, the CONSULTANT will prepare and send to the TOWN a letter establishing the date of substantial completion and commencement of a one-year warranty period.

Section V Task 7 - Prepare Construction Record Drawings

The CONSULTANT will revise the construction drawings to conform to construction record. Such construction record shall be obtained from marked-up drawings and digital files furnished by the Contractor or Contractors in addition to marked-up drawings of the CONSULTANT'S construction inspector.

Section V Task 8 - Closeout Project

Near the completion of the PROJECT, the CONSULTANT will meet with the TOWN to formerly review the PROJECT. The CONSULTANT will address all outstanding issues. For those issues that cannot be addressed at the meeting, the CONSULTANT will develop a schedule for resolving them. When all outstanding issues are resolved, the CONSULTANT will submit its final invoice for services to the TOWN.

B. ADDITIONAL SERVICES

The following services are not included in Section A or are specifically excluded from this AGREEMENT (see below) and shall be considered Additional Services. The CONSULTANT will furnish or obtain from others additional services that are not covered under Section A or specifically excluded, if requested in writing by the TOWN, and accepted by the CONSULTANT. Additional services shall be paid by the TOWN in accordance with the Fee Schedule outlined in Exhibit II.

Exclusions

- Full Time Construction Administration;
- Architectural Design Services;
- Public Roadway Improvements (other than two driveway connections);
- Design Surveys (Topography, boundary, etc.);
- Sewer Pump Station Design;
- Re-Bid of PROJECT;
- Revisions to previously approved drawings and specifications to accomplish changes required by the TOWN after the PROJECT has gone out to bid;
- Preparation of drawings and specifications for alternate bids when so directed by the TOWN for work that is not executed;
- Providing of services of special CONSULTANT other than the required normal civil, structural, mechanical and electrical services, and other special services as specifically described under Section A – Basic Services;
- Serving as an expert witness for the TOWN in any litigation involving the PROJECT;
- Providing plans and specifications in excess of three (3) sets after Bidding process. The CONSULTANT will furnish 3 sets as a Basic Service for purposes of review and permitting.
- Providing additional services, if the PROJECT is bid and constructed in more than one (1) contract;
- Design of off-site utilities;
- Design of off-site structures and facilities;
- Roadway engineering, including traffic studies, signalized intersections, design of new roadways and permits from NCDOT;
- Air, water and noise quality testing plus community impact studies;
- Hazardous material surveying;
- Presentations to government agencies other than the TOWN;
- Emergency evacuation plans;
- Wetland or Endangered Species Identification studies or permitting;
- Renderings;
- PROJECT Identification signage and monumentation design;
- Irrigation Design - The CONSULTANT will design an irrigation system for the tree landscape beds and/or open lawn areas. The TOWN will supply data on the existing water system to include hydrant flow information from not less than two fire hydrants located on Sunset Boulevard.

C. TOWN RESPONSIBILITIES

The TOWN will provide the CONSULTANT the following information as outlined below:

- Designate in writing a person to act as the TOWN's representative with respect to the work to be performed under this AGREEMENT; and such person shall have the complete authority to TOWN's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered under this AGREEMENT.
- Provide all criteria and full information as to the TOWN's requirements for the PROJECT, and furnish copies of all reports, design and construction standards, which the TOWN will require to be included in the Drawings and Specifications.
- Arrange for and make provision for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform services under this AGREEMENT.
- Give prompt written notice to the CONSULTANT whenever the TOWN observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect or non-conformance of the work.
- Direct the CONSULTANT to provide Additional Services as stipulated in Section B of this Agreement or other services as required; and
- Bear all costs incidental to compliance with the requirements of the AGREEMENT.

D. PAYMENT TO THE CONSULTANT

The CONSULTANT proposes to provide the Scope of Services outlined in Section A for a lump sum amount. The budgeted total fee estimate for the PROJECT is **\$95,500.00**, as detailed below. This estimate has been provided in good faith and may be subject to change; however, it may not be exceeded without being substantiated and mutually agreed by the CONSULTANT and the TOWN. Reimbursable expenses will be invoiced in accordance with the FEE SCHEDULES outlined in Exhibit II.

Section I. Environmental Delineation Services	\$1,500
Section II - Preliminary Design	\$9,950
Section III - Final Design	\$64,160
Section IV - Bidding	\$3,950
Section V - Construction Administration	\$15,940
TOTAL FEE	\$95,500

The CONSULTANT will submit monthly invoice statements to the TOWN for all work completed. The amount of the statement will be based on the percentage of the PROJECT accomplished during the billing period. The TOWN agrees to make prompt monthly payments in response to the monthly statements. Interest shall be charged at the rate of one and one-half (1.5) percent per month on all balances due over 90 days from date of invoice. Fixed fee amounts shall be valid for a period of six (6) months upon execution of the contract document and will be subject to an annual increase adjustment of 6 per cent per annum for uncompleted services.

E. TIMELINE FOR SERVICES

The CONSULTANT agrees to commence work upon receipt of written notice to proceed from the TOWN. Summarized below is a tentative PROJECT schedule that the CONSULTANT and TOWN have mutually agreed to adhere to. The timeline will be adjusted and extended beyond the dates shown in the tables depending on the date of the written Notice to Proceed by the TOWN.

Notice to Proceed from Town	June 4, 2013
Delineation Services	June, 2013
Preliminary Design Phase	Late June – July, 2013
Final Design Phase	July – August, 2013
Permitting and Final Town Approval*	July – September, 2013
Bidding Phase	August - September, 2013
Notice of Award	September, 2013
Notice to Proceed to Contractor	Late October, 2013
Substantial Completion	February, 2014
Final Completion	March, 2014

**If CAMA Major Permit approval is required, add 60 days to project schedule. See Section III Task 7 for information.*

The CONSULTANT will not be held responsible for any delays in time of completion resulting from:

- The TOWN's failure to carry out any of the responsibilities listed under Section A and C in a timely manner;
- Failure of approving permit agencies to provide timely approval of permit and encroachment applications;
- TOWN requesting Additional Services as outlined in Section B; and
- Any other circumstances beyond the control of the CONSULTANT

The time required to complete the services listed in Section A and Additional Services will be extended by negotiation in the event the CONSULTANT is delayed by circumstances as listed in the above paragraph.

F. DELIVERABLES TO TOWN

The CONSULTANT will provide the following to the TOWN at the completion of the Scope of Services:

- Construction Drawings / Documents.
- Bid Documents.
- Approved Permits for file.

G. ACCEPTANCE

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT the day and year first written above.

ATTEST:

**TOWN OF SUNSET BEACH
(TOWN)**

Lisa Anglin

By: _____
Gary Parker

Title: Town Clerk

Title: Town Administrator

-- S E A L --

ATTEST:

**WITHERS & RAVENEL, INC.
(CONSULTANT)**

James E. Canfield, PE

By: _____
Charles R. Smith, ASLA

Title: President

Title : Director of Planning

-- S E A L --

Attachments:

- Exhibit I - Standard Terms and Conditions**
- Exhibit II - Fee & Expense Schedule*

**See agreed upon variations to the Standard Terms and Conditions in the Addendum on the following page.*

Addendum

Variations to the Standard Terms and Conditions

I.

Strike Number 2. **Termination/Suspension** from Standard Terms and Conditions and replace with:

Termination

This AGREEMENT may be terminated by either party upon thirty (30) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this AGREEMENT is so terminated, the CONSULTANT will be paid for services rendered to the date of such termination.

II.

Strike Item 5. **Limitations of Liability** from Standard Terms and Conditions and replace with:

Limitations of Liability

No employee or agent of CONSULTANT shall have individual liability to TOWN. TOWN agrees that, to the fullest extent permitted by law, CONSULTANT'S total liability to TOWN for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the services encompassed by this AGREEMENT from any causes including, but not limited to, CONSULTANT'S negligence, errors, omissions, strict liability, breach of contract, or breach of warranty, and whether claimed directly or by way of contribution shall be limited to \$1,000,000 under this Agreement.

General Liability and Bodily Injury Insurance

The CONSULTANT will provide Commercial general liability insurance for \$1,000,000 combined limit for bodily injury and property damage.

Automobile Liability Insurance

The CONSULTANT will provide Automobile liability insurance in an amount not less than \$1,000,000 per person/per occurrence.

III.

Add the following language:

Certificate of Insurance

The CONSULTANT will file a certificate of insurance with the TOWN prior to the TOWN's execution of this AGREEMENT, and prior to engaging in any operation or activity set forth in this AGREEMENT. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the TOWN. In addition, the insured shall provide thirty (30) days prior written notice to the TOWN of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The TOWN reserves the right to require complete certified copies of policies.

IV.

Strike Item 12. **Dispute Resolution** in its entirety from Standard Terms and Conditions.