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Commissioner

John Ratzenberger
Commissioner

Marvin Demers
Commissioner

NORTH CAROLINA

PROFESSIONAL SERVICES

CONTRACT
DARE COUNTY

PURCHASE ORDER # _____

**THIS CONTRACT IS NOT VALID WITHOUT THE REQUIRED ACCOMPANYING/
CORRESPONDING PURCHASE ORDER**

(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 2nd day of March, 2016, by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and CLH Design, p.a., (hereinafter referred to as "CONTRACTOR"), party of the second part.

1. SERVICES TO BE PROVIDED AND AGREED CHARGES

The services and/or material to be furnished under this contract (hereinafter referred to collectively as "SERVICES") and agreed charges are as follows:

The services and materials to be provided under this CONTRACT are those identified in the document entitled "Proposal for Professional Design Services, Dowdy Park, Nags Head, NC", which is attached hereto and made a part hereof. The cost of this project shall not exceed \$70,000.

It is mutually agreed by and between the TOWN and CONTRACTOR that work under this contract will commence no later than March 2, 2016. The contract completion date shall be December 15, 2016.

2. DESCRIPTION OF SERVICES

The scope of services to be performed under this contract are described in the document entitled "Proposal for Professional Design Services, Dowdy Park, Nags Head, NC", which is attached hereto and made a part hereof.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from March 2, 2016 until the obligations of the CONTRACT are fulfilled and accepted by the TOWN pursuant to its terms or until the CONTRACT is terminated pursuant to its terms. Either party may nonetheless cancel this CONTRACT on thirty (30) days written notice to the other party by certified mail or personal

delivery. This CONTRACT is subject to the availability of funds to purchase the specified SERVICES and may be terminated at any time if such funds become unavailable.

Notwithstanding provisions of this Section 3 to the contrary, the following shall survive the termination of this CONTRACT: the provisions of Section 6 regarding indemnity; and the provisions of Section 10.

4. PAYMENT TO CONTRACTOR

The TOWN agrees to pay at the rates specified for SERVICES satisfactorily performed in accordance with this contract. Unless otherwise specified, the CONTRACTOR shall submit an itemized invoice to the TOWN by the end of the month in which SERVICES are completed. Payment will be processed promptly upon receipt and approval by the TOWN of the invoice.

5. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this contract. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'S activities in accordance with this contract, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

6. INSURANCE AND INDEMNITY

The CONTRACTOR shall indemnify and save harmless the TOWN, its agents and employees from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against the TOWN or which the TOWN must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from or to the extent caused by the negligent performance of or failure to perform any of its obligations under the terms of this CONTRACT.

The CONTRACTOR shall be fully responsible to the TOWN for the acts and omissions of its sub-contractors and of persons either directly or indirectly employed by it, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

In addition, the CONTRACTOR shall comply with the North Carolina Worker's Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the CONTRACTOR is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the CONTRACTOR shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents during the performance of SERVICES.

The CONTRACTOR agrees to furnish the TOWN proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

The CONTRACTOR upon request by the TOWN shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the TOWN verifying the existence of any insurance coverage required by the TOWN. The Certificate will provide for thirty (30) days advance notice in the event of termination or cancellation of coverage.

7. HEALTH AND SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees from the work and other persons who may be affected thereby.

8. NON-DISCRIMINATION IN EMPLOYMENT

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, or national origin. In the event the CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be cancelled, terminated or suspended in whole or in part by the TOWN, and the CONTRACTOR may be declared ineligible for further contracts.

9. E-VERIFICATION OF EMPLOYEES

The CONTRACTOR represents and warrants that it has ensured and will ensure for itself and each subcontractor that it uses to perform obligations under this CONTRACT, that either:

- (1) The CONTRACTOR or subcontractor employs less than 25 employees; or
- (2) The CONTRACTOR or subcontractor: (a) employs 25 or more employees who are employed for 9 months or more during a 12-consecutive-month period; and (b) has used the E-Verify program, which program is operated by the United States Department of Homeland Security and is defined in N.C. Gen. Stat. § 64-25 (5), to verify the work authorization of each employee.

10. GOVERNING LAW

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina, and the parties hereby submit to venue in and the personal jurisdiction of the said Courts.

11. OTHER PROVISIONS

This Contract is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

12. CONTRACT DOCUMENTS/AMENDMENTS

This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents, the contract language will prevail.

13. SIGNATURES

Both the TOWN and the CONTRACTOR agree to the above contract.

TOWN OF NAGS HEAD

Witnessed or Attested By:

By: _____

Title: Town Manager

Date: _____

CONTRACTOR

Witnessed or Attested By:

Corporate Seal:

By: _____

Printed Name: _____

Title: _____

Date: _____

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

TOWN ATTORNEY

CLH design, p.a.

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Cary, North Carolina 27518
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www.clhdesignpa.com



Fee Proposal

Date: February 16, 2016
To: Andy Garman, Deputy Town Manager– Town of Nags Head
From: Zak Pierce, ASLA, PLA, LEED AP – CLH Design, PA
Re: **PROPOSAL FOR PROFESSIONAL DESIGN SERVICES**
DOWDY PARK, NAGS HEAD, NC

Dear Andy:

We are very excited about this opportunity to design Dowdy Park for the Town of Nags Head! Thank you for selecting CLH design! We have reviewed your set of assumptions and incorporated them into this fee proposal. Please do not hesitate to contact me if you have any questions or concerns regarding the scope.

It is our understanding that this project has a tight schedule (November 2016 completion!). Let us know how quickly we can schedule a kick off meeting. We will need to receive the site survey and start designing immediately. Let us know if you need anything else from CLH design in order to streamline the contract execution.

Scope of Services

1. Survey Conversion and Basic Site Investigation
 - Convert boundary and topographic survey provided by the owner into useable base information for design. (AutoCAD format)
 - Investigate physical and ordinance driven restrictions on development through review of the site, survey and local and state development ordinances.
2. Meetings (During Design)
 - Weekly Conference Calls with Park Design Committee to review progress
 - Communication with Town's Civil Engineer will occur more frequently
 - Attend up to three on-site meetings with the Owner during design process.
 - Kickoff Meeting Park Design Committee
 - Two Design Meetings with Park Design Committee
 - Attend one on-site meeting to present the final design. (Estimated April/May)
3. Preliminary Design
 - Review the existing master plan against program requirements with regards to zoning, construction and general design restrictions.
 - Confirm Trillium's inclusive playground design requirements.
 - Collaborate with the Town on a goals, visioning and programming session for the park.
 - Provide recommendations of possible alternative playground and Phase 1 site layouts should restrictive conditions be identified.

4. Opinion of Probable Costs
 - Provide opinion of probable costs for any design alternates during the preliminary design phase.
 - Provide opinion of probable costs at the end of the schematic design phase and construction document (final design) phase.
5. Site/Landscape Architectural Design - Perform site design and develop construction plans and specifications for site improvements based on a schematic site plan approved by the owner. Our deliverables will consist generally of the following:
 - Existing Conditions/Demolition Plan
 - Staking Plan
 - Grading and Drainage Plan
 - *Town Civil Engineer to Design the Stormwater BMP*
 - Irrigation Plan
 - Planting Plan
 - *Includes planting of a Stormwater BMP if applicable.*
 - Site, Planting and Playground Construction Details
 - Division 31-33 Technical Specifications.
6. Design Permitting – CLH will provide the required plans for the Town to facilitate the project’s permitting process, submit and track required site development permits and approvals consisting generally of the following:
 - Site Plan Approval through the Town of Nags Head
 - Schematic Site Plan Approval through Trillium

CLH will be responsible for revisions to the plans as required by the reviewing authorities.

Per discussions with the Town, the following permitting is excluded from this proposal.

- *Erosion Control Permitting*
- *Stormwater Permitting*
- *Water and Sewer Permitting*
- *NCDOT Driveway and Encroachment Permitting*

The Owner shall be responsible for obtaining all off-site permanent and temporary easements or rights-of-way necessary for the project. CLH will indicate the location of necessary easements and rights-of-way on the drawings but any additional documents, exhibits or other assistance with negotiating and obtaining easements or rights-of-way from adjacent property owners is excluded from this scope.

7. Bidding Phase (*Formal Contract, Single Prime Contractor*)
 - Develop the Project Manual from edited standard Town of Nags Head bidding documents.
 - Coordinate public advertisement through avenues required by the Town of Nags Head.
 - Conduct a Pre-Bid Conference.
 - Issue addenda and address bidder questions.
 - Conduct Bid Opening.
 - Develop and issue a Bid Tabulation and Award Recommendation.

- Acquire required bidder's documentation and facilitate execution of contracts between the selected bidder and the Town of Nags Head.

8. Construction Observation and Administration consisting generally of the following

Note: This assumes a 4-month Construction Duration

- Issue Notice to Proceed to the Contractor.
- Conduct a Pre-Construction Conference. Attendees to include CLH design, Town of Nags Head and all applicable contractors.
- Conduct Monthly Construction Meetings, including contractors, designers, and Town of Nags Head.
- Review the Contractor's product submittals and shop drawings for compliance with the Construction Documents.
- Review change proposals, RFI's and prepare Change Orders as required.
- Visit site as necessary to provide assistance and direction to contractor.
- Visit the site at least once a month during active construction to observe construction activities and/or to perform punch list inspections. A 4-month construction duration is assumed for this proposal.
- Provide written monthly project updates / status summary (field reports) to Owner and Contractor.
- It is assumed that the Town will hire a Geotechnical Engineer to provide soil, pavement and density testing as necessary during construction.
- Review and process Contractor's Applications for Payment.
- Review field testing results (as necessary.)
- Obtain necessary documents from contractor(s) and submit a Final Report and Record Drawings (including AutoCad files) based on Contractor mark-ups and including all revisions made during bidding and construction.
 - It is assumed that the Town will be procuring a surveyor to assist with record surveys.
- Conduct one thorough on-site inspection at substantial completion and provide the owner and contractor one punch list of outstanding items.
- Coordinate and attend one final walk-through to ensure punch list items have been addressed and the site can obtain final acceptance. *(Any re-inspection visits required after the final walk-through will be charged to the contractor as per the general conditions of the bid documents.)*

Professional Services in addition to those listed above may be provide at a negotiated lump sum additional fee.

Fees

Basic Lump Sum Services & Fees		
Service	Ref. Scope No.	Fee
Basic Design Services and Permitting	1-6	\$ 47,500.00
Construction Administration	7-8	\$ 22,500.00
Total		\$ 70,000.00

Standard Hourly Rates	
Principal Engineer / Landscape Architect	\$175.00
Project Engineer / Landscape Architect	\$150.00
Project Manager	\$150.00
Project Designer	\$85.00
Construction Observation / Administration	\$80.00
Additional Construction Phase Site Visit	\$800.00

The following expenses are considered reimbursable and are not included in the above fees.

- All permitting fees and printing costs for submittals are considered reimbursable.
- Bid Advertisement fees
- Testing agency fees

Existing Site Information:

It is our understanding that a report of subsurface conditions (soil report) and a complete boundary and topographic survey will be provided by the owner. The soil report will include SHWT elevations, site grading, compaction, and pavement design recommendations. The survey will be provided in AutoCAD format for use as a base map for design.

Excluded Services

The following services, in addition to others indicated above, are excluded from the proposed Scope of Services:

- | | |
|--|---|
| <ul style="list-style-type: none"> ▪ Construction Materials and Compaction Testing ▪ Envir. Assessments or Impact Statements ▪ Fire or Domestic Water Booster Pump Designs ▪ Flood Studies ▪ Gas, Electrical or Generator Design ▪ Geotechnical Analysis ▪ LEED Design and Documentation ▪ Monument Signage Design ▪ Retaining Wall/Structural Design ▪ Variance Applications ▪ Site Lighting Design ▪ Structural Design ▪ Architectural Design | <ul style="list-style-type: none"> ▪ Surveying/Recombination/Easement Mapping & Exhibits ▪ Traffic Signal Design ▪ Traffic Studies or TIAs ▪ Wetland/Stream Delineation & Impact Permitting ▪ Sedimentation and Erosion Control Design and Permitting ▪ Stormwater Management Plan ▪ Stormwater BMP Design and Permitting (<i>BMP planting design is included in our scope</i>) ▪ Site Utility Plan (Water/Sewer) ▪ Site Utility Permitting ▪ Public Road Improvement Design and Permitting |
|--|---|
- All other services not specified within this proposal

Payment

CLH design, p.a. will submit invoices to the Town on a monthly basis and a final invoice upon completion of Services.

In the event of any cancellation or delay of the project by the Town, CLH design, p.a. will be entitled to invoice the client for all acceptable services performed or furnished and all Reimbursable Expenses incurred through the effective date of the cancellation or delay.

Acceptance

If you find the scope and fee set forth in this proposal acceptable, please sign one copy and return it to us. This will then serve as a basis of our understanding, and shall be included as part of the contract.

Letter of Agreement Accepted for:

Signed: _____

Name: _____

Date: _____

Best regards,
for CLH design, p.a.



Zak Pierce, ASLA, PLA, LEED AP
Principal