



REQUEST FOR BOARD ACTION

ITEM NO. 13.

DATE OF MEETING: February 19, 2013

REQUESTED BY: Dee Turner, Planner II, Planning & Community Development

SHORT TITLE: Resolution to Approve a Contract and Purchase Order for Design and Associated Services for the Development of Millers Pond Park

BACKGROUND: Millers Pond Park is a 31+ acre park which features a 0.53-mile walking/nature trail around the 7-acre pond. The park opened on November 22, 2011 as Pender County's first nature park as well as the first park in the Rocky Point area, which is the second fastest growing area in Pender County. The park was opened with very few improvements to its natural features and beauty; the walking/nature trail, overlook deck, several foot bridges and limited parking. Several trashcan receptacles and informational kiosks have also been constructed in conjunction with the Boy Scouts as Eagle Scout projects. In September of 2012, Pender County received a \$162,454 grant from the North Carolina Parks and Recreation Trust Fund (PARTF) and provided a \$162,454 match to further assist in the development of Millers Pond Park. The additional park development includes a picnic shelter and restroom facility, canoe/kayak launch, fishing pier, playground equipment, parking lot expansion, improved walkway and utilities. Public Notice was advertised on Pender County's website and in the Pender County Government News section of The Pender-Topsail Post & Voice for two weeks stating that Pender County was requesting qualifications from professional firms interested in providing the following services for the Millers Pond Park project: 1) Engineering design development, land surveying, final construction plans and specifications; 2) Bid documents; 3) Secure all necessary permits; 4) Construction administration and observation services; and 5) Final as built of all improvements and deliverables.

Staff received thirteen Submissions of Qualifications (SOQs) from professional engineers and firms. A spreadsheet was created listing requested content and desired experience itemized in the Request for Qualifications (RFQs) for staff to use in reviewing the SOQs. Firms were narrowed down to six based on the points assigned on the spreadsheet. The Review Team (three Planning and Community Development Department staff and one Parks and Recreation Advisory Board member) individually ranked the remaining six firms based on their Design Philosophy, Relevant Experience with projects similar to Millers Pond Park, and Project Approach. Based on those individual rankings, it was narrowed down to three firms which were required to give a presentation followed by question & answer session with the Review Team. After the presentation/discussion sessions, the Review Team chose Coastal Land Design, PLLC and its design team, Sage Design and John Sawyer Architects, based on their qualifications and experience with similar park projects. Coastal Land Design, PLLC will render the following services: landscaping and site design, Sedimentation and Erosion Control and Storm Water/Grading design, architectural design for picnic shelter and restroom facility, preparation of necessary bid packages for improvements, construction administration and oversight. Physical construction services and amenities will follow the public bidding process and contracts will be awarded based off of lowest responsible bidder.

SPECIFIC ACTION REQUESTED: To consider a resolution approving a contract and purchase order for Coastal Land Design, PLLC in the amount not to exceed \$25,000 for Design and Associated Services for the Development of Millers Pond Park.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.


Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby approves the contract and purchase order for Coastal Land Design, PLLC in a not-to-exceed amount of \$25,000 for the Design and Associated Services for Development for Millers Pond Park. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

Funds available in 60-407400-6032

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown _____ McCoy _____ Tate _____ Ward _____ Williams _____

George R. Brown, Chairman 2/19/13
Date

ATTEST 2/19/13
Date

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

_____ (“Owner”)
Pender County

and

_____ (“Engineer”).
Coastal Land Design, PLLC

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

_____ (“Project”).
Millers Pond Park

Engineer's Services under this Agreement are generally identified as follows:

_____ (“As shown on the attached fee proposal”).
As shown on the attached fee proposal

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01.
- B. Engineer shall complete its services within a reasonable time.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and

other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.

- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$200,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. A fee not to exceed \$ 25,000.00.
- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

Attachments: Fee Proposal

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: _____

Title: _____

Date Signed: _____

Address for giving notices:

ENGINEER:

By: Jeffrey B. Petroff, P.E.

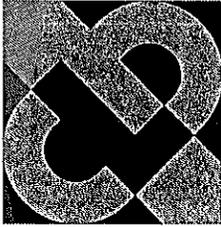
Title: Project Engineer

Date Signed: February 14, 2013

Engineer License or Firm's Certificate
Number: P-0369

State of: North Carolina

Address for giving notices:
Coastal Land Design, PLLC
P.O. Box 1172
Wilmington, NC 28402



Coastal Land Design, PLLC
Civil Engineering/Landscape Architecture
Land Planning/Construction Management

February 7, 2013

Ms. Dee Turner
Pender County Planning & Community Development
Division of Parks and Recreation
P.O. Box 1519
Burgaw, NC 28425

Re: Revised Fee Proposal for the Millers Pond Park

Ms. Turner,

Coastal Land Design, PLLC (CLD) is very pleased to have been selected by Pender County as the Design lead for the Miller Pond Park project. Our Design Team consists of professionals from Sage Design, John Sawyer Architects and Coastal Land Design as well as the use of several sub-consultants.

In order to establish a reliable cost proposal, I have outlined the anticipated project elements and provided a brief narrative of the activities. The following is general and subject to change at the owner's direction.

Scope of Services

- **Site Plan:**
Meet with staff to refine and clearly define the recreational program elements and discuss the project budget constraints. Create site plan addressing recreation items including amenities as reflected in the PARTF grant. Present site plan and any revisions needed via email or meeting at Design Team's offices.
Team Involvement: Sage Design
CLD (Cad Designer)
CLD (Proj. Engineer)
- **Landscape Plan:**
Design a landscape plan to meet all zoning and PARTF requirements.
Team Involvement: Sage Design
CLD (Cad Designer)
- **Sedimentation and Erosion Control Design:**
Design and submit all applicable plans and calculations required to receive an erosion control permit from NCDENR to disturb the soil in order to construct the site improvements.
Team Involvement: CLD (Cad Designer)
CLD (Proj. Engineer)

- **Storm Water / Grading Design:**
 Design and submit all applicable plans and calculations required to receive a storm water permit from NCDENR to construct the site improvements.
 Team Involvement: CLD (Cad Designer)
 CLD (Proj. Engineer)
- **Driveway Permitting:**
 As indicated on the RFQ, Pender County has received a valid NCDOT driveway permit. No action required from the Design Team.
 Team Involvement: None
- **Potable Water:**
 Incorporate into our construction drawings the required service lines needed to supply the restroom / picnic shelter with Pender County potable water.
 Team Involvement: Included in Site Plan
- **Sewer System:**
 Incorporate into our construction drawings the location of the proposed septic system designed and permitted by the Pender County Health Department.
 Team Involvement: Included in Site Plan
- **Restroom/Picnic Facility as well as Fishing Pier and Kayak Launch:**
 Provide architectural design, construction drawings and bid documents for the proposed restroom / picnic facility. Provide preliminary drawings for fishing pier and kayak dock.
 Team Involvement: John Sawyer Architects
- **Surveying Services (Stocks Land Surveying):**
 All survey required for the design of the site improvements for this project are included in this proposal. Site topographic survey of existing conditions and survey of areas with proposed improvements, approximately 3 acres.
 Team Involvement: Stocks Land Surveying
- **Geotechnical Investigation (Atlantic Geosciences Ltd):**
 All necessary geotechnical investigation needed for the design of the proposed stormwater treatment facilities is included in this proposal including a sealed report detailing seasonal high water table and the infiltration rate of the soils. Up to 4 boring locations.
 Team Involvement: Atlantic Geosciences Ltd
- **Bid Package Preparation:**
 Prepare plans and specifications necessary to publically bid the project. Work with Pender County to generate front-end documents. Address any contractor comments.
 Team Involvement: CLD (Proj. Manager)
 CLD (Proj. Engineer)

- **Construction Administration and Inspection:**
Perform periodic construction inspections (approximately 8 to 10 site visits) in conjunction with Pender County staff. Review and approve contractor pay requests and submit status reports to Pender County staff.
Team Involvement: CLD (Construction Inspector)
CLD (Proj. Manager)
CLD (Proj. Engineer)
Sawyer (Construction Phase Services)

Fee

The following fee is based on the Design Team headed by Coastal Land Design, PLLC performing the services as outlined above for this project. We are proposing to perform all of the services outlined in this proposal for a fee **not to exceed \$25,000.00**. This fee does not include any duplicate printing, postage, application & permit fees or additional services as noted. These items will be invoiced as a reimbursable expense to the client. Additions and/or changes to these services may require additional fees due to re-permitting, additional design requirements, and/or coordination with staff and permitting agencies for design clarification or approval.

Additional Services

The following items are currently excluded from this agreement, but may be included in separate agreements or may be performed or provided as Additional Services if desired or so authorized in writing. Additional services will be billed by separate agreement.

- **ACoE Coordination:**
Provide coordination with the ACoE to finalize their jurisdictional determination on the project site.
- **Septic System:**
Provide design and coordination with County Health Department for modification to the existing permit to handle design flows from the proposed facility.

General Conditions

The following attachments will be deemed as part of this proposal and agreement:

- Short Form of Agreement Between Owner and Engineer for Professional Services – EJCDC E-520

We are prepared to begin work immediately upon County approval and vigorously pursue all tasks. We are prepared to allocate full-time resources to insure all submittal dates are met. We appreciate the opportunity to work with you and look forward to being a part of this project. Please feel free to call me should you have questions or desire additional information.

Respectfully submitted,



Jeffrey B. Petroff, P.E.
Project Engineer

Authorization to Proceed

I hereby authorize Coastal Land Design, PLLC to proceed with the work described above.

Pender County: By: _____ Date: _____

Title: _____