

**NEW HANOVER COUNTY
REQUEST FOR QUALIFICATIONS
SMITH CREEK PARK PHASE 2A
AND NORTHERN REGIONAL PARK PHASE 2
RFQ # 21-0434**



COUNTY COMMISSIONERS

**JULIA OLSON-BOSEMAN, CHAIR
DEB HAYS, VICE-CHAIR
JONATHAN ARFIELD, JR.
BILL RIVENBARK
ROB ZAPPLE**

CHRIS COUDRIET, COUNTY MANAGER

NEW HANOVER COUNTY
REQUEST FOR QUALIFICATIONS
SMITH CREEK PARK PHASE 2A
AND NORTHERN REGIONAL PARK PHASE 2
RFQ # 21-0434

New Hanover County, located in Wilmington, NC, is soliciting qualification submittals from engineering firms to provide professional services for the design expansion and development of two existing parks- Smith Creek Park and Northern Regional Park.

Submit Statements of Qualifications by mail to:

New Hanover County
Attn: Lena Butler, Purchasing Supervisor
230 Government Center Drive, Suite 165
Wilmington, North Carolina 28403

The deadline for receipt of Statements of Qualifications is **3:00 P.M. EST, Thursday, July 15, 2021.**

Submitted Statements of Qualifications are not subject to public inspection until a contract is awarded and executed. Statements of Qualifications will be evaluated, and firms may be contacted for interviews which may be conducted by phone or in person.

Instructions for submitting Statements of Qualifications and complete requirements may be obtained by visiting the County at <https://finance.nhcgov.com/purchasing-solicitation/open-and-closed-bids>.

New Hanover County reserves the right to accept or reject any or all Statements of Qualifications and to make the award which will be most advantageous to the County.

Released: Friday, June 25, 2021

Section 2 Instructions

2.1 Schedule

Advertisement	<i>Friday, June 25, 2021</i>
Deadline for Questions	<i>Friday, July 2, 2021 by 3:00 PM, EST</i>
Answers to Questions	Wednesday, July 7, 2021
Deadline for Receipt of Statements of Qualifications	<i>Thursday, July 15, 2021 by 3:00 PM, EST</i>

2.2 Statement of Qualifications Instructions

2.2.1 Submit Statements of Qualifications in a sealed envelope properly marked “**RFQ # 21-0434 Smith Creek and Northern Regional Park**” and addressed to the County at the following address:

New Hanover County
Attn: Lena Butler, Purchasing Supervisor
230 Government Center Drive, Suite 165
Wilmington, NC 28403

Firms submitting their qualifications statements are asked to submit three (3) copies of the complete statement of qualifications along with one (1) electronic copy on USB.

Clearly indicate the firm’s name, address, email and phone number on the outside of the envelope containing the Statement of Qualifications (SOQ).

The successful firm must have the capability of receiving and submitting all documents in an electronic format. Also, the successful firm must have Internet access for browsing and receipt of electronic documents via email.

2.2.2 Statements of Qualifications received after the time and date for closing will not be accepted.

2.3 Communications: After the release date, all communications between the County and prospective respondents regarding this RFQ shall be in writing. Any inquiries, requests for interpretation, technical questions, clarifications, or additional information shall be directed to **Lena Butler, Purchasing Supervisor** by emailing lbutler@nhcgov.com. All questions concerning this RFQ should reference the section number and page. Questions and responses will be compiled and shared with all interested Respondents known to the County and posted as an addendum. **All questions shall be received no later than Friday, July 2, 2021, at 3:00 PM, EST.**

Respondents may not have communications, verbal or otherwise, concerning this RFQ with any personnel or boards from New Hanover County, other than the person listed in this section. If any vendor attempts any unauthorized communication, the proposal will be rejected.

- 2.4 Intent to Submit:** All Respondents who intend to submit a Statement of Qualification on this project should send an email to lbutler@nhcgov.com including pertinent contact information. This will ensure that you receive all addenda issued for this RFQ; if applicable.
- 2.5 Addendum:** Any changes to the RFQ will be issued by addenda and sent by email to all respondents that have notified the County of their intent to submit a Qualification Package. The addenda will also be posted on the County's website at <https://finance.nhcgov.com/purchasing-solicitation/open-and-closed-bids>.
- 2.6 Minor Deviations:** New Hanover County reserves the right to allow or disallow minor deviations or technicalities should the County deem it to be in the best interest of the County. New Hanover County shall be the sole judge of what is to be considered a minor deviation or technicality.
- 2.7 Evaluation and Interviews:** Statements of Qualifications will be evaluated, and oral interviews may be requested as part of the evaluation process. If interviews will be conducted, the County will contact Respondents by email to make arrangements.
- 2.8 Incurred Cost:** New Hanover County is not liable for any cost incurred by any firm prior to an award. Costs for developing a response to this request for qualification packages are entirely the obligation of the respondent and shall not be chargeable in any manner to New Hanover County.
- 2.9 Binding Agreement:** No agreements with any selected Respondent shall be binding until a contract is signed and executed by the authorized County official and authorized representatives of the firm.
- 2.10 Minority Participation:** It is the policy of New Hanover County that minority/women business enterprises shall have maximum opportunity to compete for and participate in its procurement and contracting activities. In this regard, the County has established an overall annual goal of 10% for minority/women business enterprise participation in its various procurement contracts. The County and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of its contracts.
- 2.11 Additions and Deletions:** The County reserves the right at its sole discretion to increase, decrease, or delete any portion of this agreement contract at any time without cause, and if such right is exercised by the County, the total fee shall be adjusted accordingly. If work has already been accomplished on the portion of the contract to be increased, decreased, or deleted, the contractor shall be paid for the correct portion on the basis of the estimated

percentage agreed upon by the County, the contactor, and the contract manager upon completion of such portion.

- 2.12 Right to Reject:** The County reserves the right to reject any and all qualification packages with or without cause, to waive technical errors and informalities, or to accept that qualification packages or combination of qualification packages which in the County's sole and absolute judgment best serves the public interest.
- 2.13 No Public Opening:** Qualification packages shall **NOT** be publicly opened. Submitted Statements of Qualifications are not subject to public inspection until contract is awarded and executed. Qualification packages that are received by telephone, facsimile, telegram, or electronic mail are not acceptable and will be rejected.
- 2.14 Pricing:** No fee proposal is to be included in the qualification package. This solicitation is for qualifications only.
- 2.15 Conflict of Interest:** The award hereunder is subject to provisions of State Statutes and/or County Ordinance. Respondents must disclose with their qualification packages the name of any officer, director, or agent who is also an employee of New Hanover County. Further, all respondents must disclose the name of any County employee who owns, directly or indirectly, any interest in the respondent's firm or any of its branches.

Any Firm placed under contract with the County must further notify the County in writing within five (5) days of their discovery of a potential conflict of interest and make such continuing disclosure throughout the term of the contract. A full disclosure shall include a description of the action that the Firm has taken, or proposes to take, to avoid or to mitigate such conflicts of interest. The County may terminate the contract if the County deems such termination to be in the best interest of the County or may terminate the Firm's assignment to a project based upon its assessment of potential conflict.

- 2.16 License/Certifications:** The successful vendor will be required to secure, at its expense, the proper occupational license and/or any other license required of the applicable work being performed. Proof of license and/or certification may be required prior to award. The respondent shall comply with all federal and state laws, county and municipal ordinances and regulations in any manner affecting the performance of the work. The respondent shall state its occupation license number and expiration date.
- 2.17 Insurance:** Responders to this solicitation shall show appropriate insurance coverage levels for providing the types of services described above. Upon selection, the selected firm shall provide specific insurance certificates naming New Hanover County as an additional insured for the required insurance categories of coverage as outlined in the Draft Contract located in Section 7 of this RFQ. The insurance limits are located in Section VI of the Draft Contract.
- 2.18 Trade Secret Confidentiality:** According to General Statutes 132 - 1.2, trade secrets contained in a bid may be kept confidential if the bidder, at the time the bid is submitted, designates that is secret and requests that it be kept confidential. Any information considered to be confidential should be placed in a separate and clearly marked "Confidential." **Marking the entire proposal confidential may be grounds for rejection of proposal.**

- 2.19 Certificate of Authority:** Subject to several statutory exceptions, a business entity incorporated or organized in a state other than North Carolina must obtain a certificate of authority from the North Carolina Secretary of State prior to transacting business in the State. See G.S. 55-15-01(a) (business corporations); G.S. 55A-15-01(a) (nonprofit corporations); G.S. 57D-7-01(a) (limited liability companies); G.S. 59-902(a) (limited partnerships); G.S. 59-91(a) (registered limited liability partnerships); G.S. 55B-16(a) (professional corporations). When the requirement applies, the foreign entity transacting business in the State is responsible for obtaining a certificate of authority—not the domestic (i.e., North Carolina) corporations, public entities, or individuals with whom the foreign entity might contract.
- 2.20 Federal Uniform Guidance:** If the source of funds for this contract was federal funds, the following federal provisions would apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland “Anti-Kickback” Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2CFR § 200.324).
- 2.21 E-Verify:** Pursuant to Session Law 2013-418, Bidder shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. Upon execution of contract, County requires an affidavit attesting to Bidder’s compliance. Violation of the provision, unless timely cured, shall constitute a breach of contract.

Section 3 Background and Scope

New Hanover County, located in Wilmington, NC, is soliciting qualification submittals from engineering firms to provide professional services for the design expansion and development of two existing parks- Smith Creek Park and Northern Regional Park.

Specific work to be addressed will include but not be limited to final design drawings, specifications for construction, bid packages, construction contract negotiation, permitting, park construction and construction contract administration/observations.

Smith Creek Phase 2A will consist of undetermined passive park elements, restrooms, parking and other support infrastructure. Smith Creek Park is a 180-acre park located at 633 Shenandoah Street that includes a lake, paved and unpaved trails, a multi-age playground, a picnic shelter/restroom, and a canoe/kayak launch. Approximately half of the acreage is currently undeveloped.

Northern Regional Park is a 114-acre park located at 4700 Old Ave, in Castle Hayne, NC. The park currently offers a walking trail, disc golf course, picnic facilities, baseball and multi-use fields, basketball, pickleball courts, and a playground. Anticipated additional amenities include a dog park, additional multi-purpose fields, fitness stations, restrooms, parking lot, and other associated infrastructure. Approximately half of the acreage is currently undeveloped.

Section 4 Format for Statements of Qualifications

The Qualification packages shall consist of the following:

(a) TRANSMITTAL LETTER

This is to serve only as the document covering transmittal of the Qualification packages package and shall not exceed two (2) pages. The letter should provide the name, title, address, and telephone number of the official contact person and an alternate. These individuals shall have the authority to bind the Engineering Firm and shall be available to be contacted by telephone or attend meetings as may be appropriate.

(b) TECHNICAL RESPONSE

The technical response shall contain the six (6) sections outlined below and shall not exceed the assigned pages listed for each section:

(1) Introduction (2 pages): The content of this section shall be at the discretion of the Design/Engineering Firm.

(2) Company Background (3 pages): This section should provide information on the Firm's historical background and experience with park development projects including the Firm's previous experience with the County. The Firm's background should include: the number of years that the company has been in existence; the number of years the Firm has been involved with similar projects, design, and permitting projects; years involved with environmental engineering or related activities; and the Firm's current financial condition.

(3) Statement of Qualifications (4 pages): This section should demonstrate the project team's overall technical expertise and experience in park design. The Firm should demonstrate that the firm and specifically, the assigned project managers and key personnel have a thorough understanding of the regulatory requirements affecting the siting, design, permitting, and construction of similar facilities within the state of North Carolina and New Hanover County. In addition, the firm and the assigned project managers and key personnel should illustrate their understanding of the various design and construction standards of similar facilities.

(4) Personnel proposed for assignment to the project, including all major subconsultants must be identified and their qualifications provided. Specific project positions must coincide with Firm's project organization chart.

Availability of the assigned contract managers and key personnel must be identified. Subcontractors shall be identified and the intended scope of their work detailed. The County expects personnel, subconsultants, and subcontractors identified in the qualification packages response to be available for work to complete services identified under this solicitation.

(5) Project Management (4 pages): The Firm should describe the organizational structure and "chain of command" of the Firm's proposed project team and the project management methods that are most appropriate to perform the contract services. The discussion should include: methods for communicating with team members, schedule controls, cost controls, quality assurance protocols, and any other appropriate management considerations.

(6) Past Performance -References (3 pages): The Firm's past performances on contracts will be evaluated. The Firm must list a minimum of three (3) separate and verifiable clients.

Project Title

Client name, address

Current Contact and telephone number

Location of project (if different than above)

Project term

Performance period

Brief description of projects

Section 5 Evaluation Criteria

Failure to include requested information in the RFQ response package will result in a score of zero for the section in which the information applies.

Firm Name:

Evaluated By:

I. Company Experience: 40 Points

- Company's history & experience in park design and familiarity with proposed project sites.
- Overall qualifications of project managers and key personnel

II. Project Management: 30 Points

- Firm staff's experience in North Carolina and New Hanover County
- Project manager's experience in design, permitting, and construction oversight in coastal regions
- Past performance of cost control techniques employed by the firm as demonstrated by the ability to establish accurate project construction budget and design to this budget as evidenced by the low bid amount
- Data management and project tracking methods
- Quality of work as demonstrated by history of design related
- Capacity of proposed design team to accomplish final design within 120 days of contract award

III. Client Evaluations 30 Points

TOTAL POINTS: 100 Points

Section 6 Forms

- 1. Minority Form**
- 2. E-Very Form**

(Submit with your Response)

**Minority & Women Business Enterprise (MWBE) Program
FORM**

A. Authorized Representative

I HEREBY AFFIRM THAT:

I am [name] _____, [title] _____,
and the duly authorized representative of [Business Name] _____
and that I possess the legal authority to make this statement on behalf of myself and the Business
for which I am acting.

B. Affirmation Regarding MWBE Program Acknowledgement and Compliance

I FURTHER AFFIRM THAT:

I am aware of and intend to comply with the County's MWBE Program. As such [check one]:

_____ The Business is certified as a woman- or minority-owned business by an accepted agency.
(Attach proof certification)

_____ The Business is a woman- or minority-owned business but has not been certified by an
accepted agency. (Attach document of ownership such as articles of incorporation, current
business license, K-1 of the most recent business tax return.)

_____ The Business is not a woman- or minority-owned business; however, the bidder
acknowledges the MWBE policy and if it should become necessary to subcontract some portion
of the work at a later date or obtain materials or services in conjunction with this
solicitation, the bidder will institute good faith efforts to comply with all requirements of the
MWBE program in providing equal opportunities to MWBEs.

Signature: _____

Date: _____

E-VERIFY FORM

(To be submitted with your response)

STATE OF _____

COUNTY OF _____

AFFIDAVIT OF COMPLIANCE WITH N.C. E-VERIFY STATUTES

I, _____ (hereinafter the "Affiant"), duly authorized by and on behalf of _____ (hereinafter the "Employer") after being first duly sworn deposes and says as follows:

- 1. I am the _____ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
- 2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
- 3. Employer employs 25 or more employees, and is in compliance with the provisions of N.C. General Statute §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.

 Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. General Statute §64-26.
- 4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. General Statute §64-26.
- 5. Employer shall keep the State of North Carolina informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This ____ day of _____, 20____.

Signature of Affiant

Printed Name and Title

State of _____
County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

(SEAL)

My Appointment Expires _____

Section 7 SAMPLE DRAFT CONTRACT

This draft contract is included for your information only. It will be used when executing an agreement with the successful firm.

STATE OF NORTH CAROLINA

NEW HANOVER COUNTY

AGREEMENT

THIS CONTRACT made and entered into this _____ day of _____ 2021, by and between **NEW HANOVER COUNTY**, a political subdivision of the State of North Carolina, hereto referred to "County"; and _____, hereinafter referred to as "Engineer"; for services described below to be rendered for the following Project:

County shall hire Engineer to provide design and consulting services for the project, herein after referred to as "Project". Engineer shall provide design services for Smith Creek Park Phase 2A and NRP Park Phase 2, and as more fully described in the RFQ and Proposal, attached hereto and incorporated herein by reference.

The County and Engineer hereby agree as follows:

ARTICLE I

ENGINEER 'S BASIC DUTIES TO COUNTY

1.1 By executing this Agreement, Engineer represents to County that Engineer is professionally qualified to act as Engineer for this Project. Engineer further represents to County that Engineer will maintain all necessary licenses, permits or other authorizations necessary to act as Engineer for this Project until Engineer 's duties hereunder have been satisfied. Engineer assumes full responsibility to County for the negligent acts and omissions of its consultants or others employed or retained by Engineer in connection with this Project.

1.2 Execution of this Agreement by Engineer constitutes a representation that Engineer has become familiar with the Project and the conditions under which the Project is to be implemented.

1.3 Schedule (See Exhibit A)

1.4 Project Review Meetings. Engineer shall conduct a monthly Project meeting with County. This meeting will provide a comprehensive review of all aspects of the Project's status and provide a time for discussion of major policy, project performance, design, budget, and schedule issues that may arise.

1.5 Schematic Drawings

1.5.1 Engineer shall review and examine existing information, including any desired schedule, budgetary requirements and preliminary design information furnished by County to understand the requirements of the Project and shall review the understanding of such requirements with County.

1.5.2 Engineer shall review and discuss with County any alternative approaches to design and construction of the Project.

1.5.3 Engineer shall prepare and submit to County for review, schematic design documents consisting of drawings and other documents illustrating the scale and relationship of proposed Project modifications.

1.5.4 Engineer shall furnish County two (2) copies each of drawings, sketches, forms and reports as appropriate and necessary for County's use, review, and approval.

1.6 Detailed Design

1.6.1 Based on the schematic design documents and any adjustments authorized by County in its program, desired schedule or project budget, Engineer shall prepare and submit to County for review, detailed design documents consisting of drawings and other documents to fix and describe the size and character of the Project as proposed or modified by County.

1.6.2 Engineer shall furnish County two (2) copies of each of drawings, sketches, forms and reports as appropriate and necessary for County's use, review and approval, unless County shall request additional copies.

1.7 Construction Documents

1.7.1 Upon County's authorization, Engineer shall prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for construction of the Project. Such construction documents shall be reasonably accurate, coordinated and adequate for construction and shall be in conformity and comply with applicable law, codes and regulations in force at the time of preparations of the documents. Products specified for use shall be readily available unless written authorization to the contrary is given by County.

1.7.2 Engineer shall furnish County with two (2) copies each of all completed drawings, specifications, reports, estimates, and contract documents and a set of reproducible disks.

1.8 Construction Administration

1.8.1 Engineer shall provide administration of the construction contract as set forth below and shall perform those duties and discharge those responsibilities set forth herein and in the Agreement between County and Engineer hereinafter referred to as the "Construction Contract."

1.8.1.1 Engineer's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to County of the final Certificate of Payment. However, Engineer shall be entitled to a Change in Services when Contract Administration Services extends sixty (60) days after the original date of Substantial Completion of the work.

1.8.1.2 Engineer shall be representative of and shall advise and consult with County during the provision of the Contract Administration Services. Engineer shall have authority to act on behalf of County only to the extent provided in this Agreement unless otherwise modified by written amendment.

1.8.2 Upon receipt, Engineer shall review and examine the Contractor's Schedule of Values, together with any supporting documentation or data, which County or Engineer may require from the Contractor. The purpose of such review and examination will be to advise County of an unbalanced Schedule of Values, which allocates greater value to certain elements of the work than is indicated by such supporting documentation or data or, than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless County directs Engineer to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, Engineer shall sign the Schedule of Values thereby indicating its informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. Engineer shall not sign such Schedule of Values in the absence of such belief unless directed to do so by County in writing.

1.8.3 Engineer shall review the work of the Contractor whenever and wherever appropriate. The purpose of such inspections will be to determine the quality, quantity, and progress of the work in comparison with the requirements of the Construction Contract. In making such inspections, Engineer shall exercise care to advise County of defects or deficiencies in the work, from unexcused delays in the schedule and from overpayment to the Contractor.

1.8.3.1 Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Engineer will report to Owner any deficiencies in the construction means, methods, techniques, sequences, procedures, or safety observed by Engineer or its representative.

1.8.3.2 Engineer shall provide written reports of inspections and shall report to County known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, Engineer shall not be responsible for the Contractor's failure to perform the work in accordance with the requirements of the Contract Documents. Engineer shall be responsible for Engineer's negligent acts or omissions but shall not have control over or charge of and shall not be responsible for acts of omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the work.

1.8.4 Engineer shall at all times have access to the work wherever it is located.

1.8.5 Engineer shall determine amounts owed to the Contractor based upon observations of the work as required herein, evaluations of the Contractor's rate of progress in light of the remaining Contract Time and upon evaluations of the Contractor's applications for payment and shall issue certificates for payment to County in such amounts.

1.8.6 The issuance of a certificate for payment shall constitute a representation by Engineer to County that Engineer has made a review of the work as provided herein and to the best of the knowledge, information and informed belief of Engineer, that the work has progressed to the level indicated, that the quality of the work meets or exceeds the requirements of the Construction Contract, and that, the Contractor is entitled to payment of the amount certified. The issuance of a Certificate of Payment shall not be a representation that Engineer has reviewed construction means, methods, techniques, sequences or procedures or ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

1.8.7 Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the work with reasonable promptness on request of County.

1.8.8 Engineer shall, with the permission of County, reject work, which does not conform to the contract documents unless directed by County, in writing, not to do so. Whenever, in Engineer's opinion, it is necessary or advisable, Engineer shall require special inspection or testing of the work in accordance with the provisions of the Construction Contract whether or not such work is fabricated, installed, or completed. Engineer shall review and approve all testing reports pertaining to project construction.

1.8.9 Engineer shall review and approve, or take other appropriate action upon, the Contractor's submittal such as Shop Drawings, Product Data and Samples. Approval by Engineer of the Contractor's submittal shall constitute Engineer's representation to County that such submittal is in conformance with the Construction Contract. Such action shall be taken with reasonable promptness to cause no delay to the Contractor or the Project. Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Engineer, of any construction means, methods, techniques, sequences or procedures. Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.8.10 Engineer shall review, and advise County concerning, proposals and requests for Change Orders from the Contractor. Engineer shall prepare Change Orders for County's approval and execution in accordance with the Construction Contract and shall have authority to order with the consent of County, by Field Order, minor changes in the work not involving an adjustment in the Contract Price or an extension of the Contract Time.

1.8.11 Engineer shall conduct a review to determine the date of Substantial Completion and the date of Final Completion, shall receive and forward to County for County's review written warranties and related documents required by the construction contract and assembled by the Contractor, and shall, when appropriate, issue a final Certificate for Payment.

1.8.12 Engineer shall, without additional compensation, promptly correct any errors, omissions, deficiencies or conflicts in Engineer's work product.

1.8.13 Engineer shall indemnify and hold, County, its officers, officials, agents and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, on account of personal injuries or death or on account of property damages arising out of or relating to the work to be performed by Engineer hereunder, resulting from the negligent act or omission of Engineer, its agents, employees and subcontractors.

1.8.14 Engineer shall provide a set of reproducible (inks on Mylar) record drawings of projects showing significant changes in the works made during construction based on marked-up prints, drawing and other data furnished by the Contractor to Engineer. Engineer shall be able to rely on the completeness and accuracy of this information.

1.9 Additional Services

Any additional services will be negotiated with Engineer to be paid based on the attached Exhibit A, or as otherwise agreed upon through Change Order.

ARTICLE II

COUNTY'S DUTIES TO ENGINEER

2.1 Unless otherwise provided under this Agreement, County shall provide full information in a timely manner regarding requirements for and limitations on the Project.

2.2 County's Designated Representative shall be authorized to act on County's behalf with respect to the Project. County or County's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by Engineer in order to avoid unreasonable delay in the orderly and sequential progress of Engineers services.

2.3 Unless otherwise provided in this Agreement, County shall furnish tests, inspections and reports required by law or the Contract Documents such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

2.4 County shall provide prompt written notice to Engineer if County becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in Engineer's documents.

ARTICLE III
COMPENSATION TO ENGINEER

3.1 Engineer's Invoices

3.1.1 On or before the 10th day of each month, unless otherwise agreed in writing by Engineer and County, Engineer shall submit an invoice to County requesting payment for services properly rendered. Engineer's invoice shall describe with reasonable particularity each service rendered, and the date thereof.

3.1.2 If payment is requested for services rendered by Engineer, the invoice shall additionally reflect the allocations as provided in Article III and shall state the percentage of completion as to each such allocation. The invoice shall bear the signature of Engineer, which signature shall constitute Engineer's representation to County that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein, that the reimbursable expenses included in the invoice have been reasonably incurred, that all obligations of Engineer covered by prior paid invoices have been paid in full, and that, to the best of Engineer's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Engineer that payment of any portion thereof should be withheld. Submission of Engineer's invoice for final payment and reimbursement shall further constitute Engineer's representation to County that, upon receipt from County of the amount invoiced, all obligations of Engineer to others, including its consultants will be paid in full.

3.2 Time for Payment. County shall make payment to Engineer of all sums properly invoiced as provided in Payments to Engineer paragraph, within thirty (30) days of County's receipt thereof.

3.3 Owner's Right to Withhold Payment. In the event that County becomes credibly informed that any representations of Engineer are wholly or partially inaccurate, County may withhold payment of sums then or in the future otherwise due to Engineer until the inaccuracy, and the cause thereof, is corrected to County's reasonable satisfaction. County may also withhold payment in the event that Engineer fails to respond in a timely manner to project issues, which arise through the course of the Project, to the County's satisfaction.

3.4 Reimbursable Expenses

3.4.1 Reimbursable Expenses shall mean: expenses incurred by Engineer and Engineer's consultants in the interest of the Project, only to the extent as follows:

3.4.2 Reasonable expenses of: transportation; long distance communications; postage; additional insurance coverage or limits, including professional liability insurance requested by County in excess amounts specified in this agreement; or other similar cost at the actual cost of these expenses to the Engineer.

3.4.3 Expenses including reproduction and handling of drawings, specification and other documents; renderings; models; mock-ups requested by the

County; expenses for additional services of consultants, services and land surveyors, geotechnical engineers, and other similar expenses shall be reimbursed to the Engineer at a multiple of 1.15 times the amount billed to the Engineer for such services.

3.5 Basis of Compensation. County agrees to pay Engineer, for the full and faithful performance of this contract. Engineer will bill County monthly and County will process payment upon approval of work completed to date. The total sum of the contract shall not exceed _____ (**\$_____**) **DOLLARS**, as per the proposal provided by the Contractor in Exhibit A, attached hereto. Time is of the essence and payment is contingent upon completion of Project by required dates and upon acceptance of the work by the County.

ARTICLE IV
ENGINEER'S RECORDS

4.1 Engineer's Records

4.1.1 Documentation accurately reflecting the time expended by Engineer and its personnel, and records of Reimbursable Expenses shall be maintained by Engineer and shall be available to County for review and copying upon request.

4.1.2 Engineer shall maintain books, records, documents and other evidence directly pertinent to the work under this Contract in accordance with generally accepted accounting principles and practices. County, or any of its duly authorized representatives, shall have access to any books, documents, papers, records and other evidence, which relates directly to the Project for the purpose of examination, audit, excerpts and transcriptions.

4.1.3 Records described above shall be maintained and made available during the performance under this Contract and for a period of three years after County makes final payment and all other pending matters are closed.

ARTICLE V
TERMINATION

5.1 Termination for Cause. This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

5.2 Termination by County Without Cause. This Agreement may be terminated by County without cause upon seven (7) days written notice to Engineer.

ARTICLE VI
INSURANCE

6.1 Minimum Scope and Limits of Insurance

6.1.1 Commercial General Liability

6.1.1.1 Engineer shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability (CUL) insurance with a total limit of not

less than \$1,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

6.1.1.2 CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering CGL or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured Contract, including the tort liability of another assumed in a business contract.

6.1.1.3 County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 26 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of Engineer; products and completed operations of Engineer; premises owned, leased or used by Engineer; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, officials, agents, and employees.

6.1.1.4 Engineer's CGL insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Engineer's insurance.

6.1.2 Workers' Compensation and Employer's Liability

6.1.2.1 Engineer shall maintain Workers' Compensation as required by the general statutes of the State of North Carolina and Employer's Liability Insurance.

6.1.2.2 The Employer's Liability, and if necessary, CUL insurance shall not be less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and 1,000,000 policy limit.

6.1.2.3 The insurer shall agree to waive all rights of subrogation against County, its officers, officials, agents, and employees for losses arising from work performed by Engineer for County.

6.1.3 Business Auto Liability

6.1.3.1 Engineer shall maintain Business or Personal Auto Liability and, if necessary, CUL insurance with a limit of not less than \$1,000,000 each accident.

6.1.3.2 Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos used in performance of services.

6.1.3.3 Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.

6.1.3.4 Engineer's Business Auto Liability insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other

insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Engineer's insurance.

6.1.4 Professional Liability Insurance

6.1.4.1 Engineer shall maintain in force for the duration of this Contract professional liability or errors and omissions liability insurance appropriate to Engineer's profession. Coverage as required in this paragraph shall apply to liability for professional error, act, negligence, or omission arising out of the scope of Engineer's services as defined in this Contract. Coverage shall be written subject to limits of not less than \$1,000,000 per loss.

6.1.4.2 If coverage in this Contract is on a claims-made basis, Engineer warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time that work under the Contract are complete.

6.2 Deductibles and Self-Insured Retentions

6.2.1 Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, agents, and employees; or Engineer shall procure a bond guaranteeing payment of deductibles or self-insured retentions.

6.2.2 Engineer shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not County is an insured under the policy.

6.3 Miscellaneous Insurance Provisions

6.3.1 Any failure to comply with reporting provisions of the policies listed in this Contract shall not affect coverage provided to County its officers, officials, agents, and employees.

6.3.2 Each insurance policy required by this Contract shall be endorsed to state that coverage shall not canceled by either party except after thirty (30) days prior written notice has been given to County, 230 Government Center Drive, Ste. #125, Wilmington, NC 28403.

6.3.3 If Engineer's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

6.4 **Acceptability of Insurers.** Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless County has granted a specific exemption.

6.5 Evidence of Insurance

6.5.1 Engineer shall furnish County with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with

the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this Contract are deemed complete.

6.5.2 Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract.

6.5.3 With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to County with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

6.6 **Subcontractors.** Engineer shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein. CGL coverage shall include independent Contractors' coverage, and Engineer shall be responsible for assuring that all subcontractors are properly insured.

6.7 **Conditions**

6.7.1 County may, at its discretion with approval of Risk Management and the Finance Department, accept letters of credit or custodial accounts in lieu of specific insurance requirements.

6.7.2 Engineer shall provide that the insurance contributing to the satisfaction of insurance requirements in this Contract shall not be canceled, terminated, or modified by Engineer without prior written approval of County.

6.7.3 Engineer shall promptly notify New Hanover County Facilities Management and the Risk Management Office at (910) 798-7497 of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

6.7.4 County reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

6.7.5 Failure of County to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of County to identify a deficiency from evidence that is provided shall not be construed as a waiver of Engineer's obligation to maintain such insurance.

6.7.6 County request of insurance does not represent that coverage and limits will be adequate to protect Engineer and such coverage and limits shall not be deemed as a limitation of Engineer's liability under the indemnities granted to County in this Contract.

6.7.7 If Engineer fails to maintain the insurance as set forth herein, County shall have the right, but not the obligation, to purchase said insurance at Engineer's expense. Engineer agrees to reimburse County for all expenses incurred for such purchase.

6.7.8 Engineer or its agent may apply to County for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.

6.7.9 County shall have the right to prohibit Engineer or any subcontractor from entering the Project site, performing services, or withholding payment until required certificates are acquired.

ARTICLE VII
MISCELLANEOUS PROVISIONS

7.1 **Independent Contractor.** Both parties mutually understand and agree that Engineer is an independent contractor and not an agent of County, and as such, Engineer, its agents and employees shall not be entitled to any County employment benefits, such as, but not limited to, vacation, sick leave, insurance, worker's compensation, or pension or retirement benefits.

7.2 **Non-waiver of Rights.** It is agreed that County's or Engineer's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement. However, specific written waivers signed by the authorized County representative shall be binding upon County.

7.3. **Conflict of Interest.** No paid employee of County shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

7.4 **Subcontracts.** Engineer shall utilize no subcontractors for carrying out the services to be performed under this Agreement without the written approval of County. By the execution of this Agreement, County grants prior approval to the following subcontractors if any (See Exhibit "B" if subcontractors are to be listed):

7.5. **Further Actions.** The parties will make and execute all further instruments and documents required to execute the purposes and intent of this Agreement.

7.6. **Inclusive Terms.** Use of the masculine herein shall include the feminine and neuter, and the singular shall include the plural.

7.7. **Governing Law.** All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina.

7.8 **Time.** Engineer's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Engineer shall submit for County's approval a schedule for the performance of Engineer's service which initially shall be consistent with the periods established and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for time required for County's review, for the performance of County's Consultants, and for the approval of submissions by authorities having jurisdiction over the Project. Time

limits established by this schedule approved by County shall not, except for reasonable cause, be exceeded by Engineer or County.

7.9 Use and Ownership of Documents. The drawings, specifications and other documents or things prepared by Engineer for the Project shall become and be the sole property of County upon final completion of the project. Engineer shall be permitted to retain copies thereof for its records and for its future professional endeavors. Such drawings, specifications and other documents or things are not intended by Engineer for use on other projects by County or others. Any reuse by County or by third parties without the written approval of Engineer, shall be at the sole risk of County and County shall indemnify and save harmless Engineer from any and all liability, costs, claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, such reuse; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the Engineer. Engineer shall not be restricted in any way in the use or reuse of any of the designs, drawings, details, specifications, or other work produced by Engineer in the normal course of its business. It is understood that Engineer is not transferring a copyright to County.

7.10 Successors and Assigns. Engineer shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of County. Subject to the provisions of the immediately preceding sentence, County and Engineer bind themselves, their successors, assigns, and legal representatives to the other party to this Agreement and to the successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement.

7.11. No Third-Party Beneficiaries. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

7.12. Entire Agreement. This Agreement represents the entire agreement between County and Engineer and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both County and Engineer.

7.13. Notices. All notices required hereunder to be sent to either party shall be sent to the following designated addresses, or to such other address or addresses as may hereafter be designated by either party by mailing of written notice of such change of address, by Registered Mail, Return Receipt Requested:

To County:
New Hanover County Parks
Attn: Tara Duckworth
896 Airlie Road
Wilmington, NC 28403

To Engineer:

7.14 **Non-Discrimination.** Engineer will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program that is the subject of this agreement because of race, creed, color, sex, age, disability, or national origin. To the extent applicable, Engineer will comply with all provisions of Executive Order No. 11246, the Civil Rights Acts of 1964 (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable Federal, State and local laws, ordinances, rules, regulations, including all Federal and State Occupational Safety and Health Act (OSHA) requirements, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice, shall be a material breach of this agreement and may result, at County's option, in a termination or suspension of this Agreement in whole or in part.

7.15 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when Engineer's services are substantially completed.

7.16 To the extent damages are covered by property insurance during construction, County and Engineer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in this Agreement. County or Engineer shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

7.17 In the event of a breach of this Agreement by either party, the other party shall be entitled to recover its actual compensatory damages only. Such damaged party shall not be entitled to any consequential damages. Actual compensatory damages for any tort claim shall include, but are not limited to, County facility operational costs and other accommodations.

7.18. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of a third party against either County or Engineer.

7.19. County and Engineer shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

7.20 **Contract Under Seal.** The parties hereto expressly agree to create a contract under seal.

7.21 **E-Verify Compliance.** Pursuant to N.C.G.S. 143-133.3, Engineer shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. Violation of the provision, unless timely cured, shall constitute a breach of contract.

7.22 **Compliance with Federal Law.** If applicable, all federally funded projects, loans, grants, and sub grants whether funded in part or wholly, must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200), and attached Addendum incorporated herein by reference.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals, the day and year first above written and by authority duly given.

ENGINEER

[CORPORATE SEAL]

_____[SEAL]
President

ATTEST:

Secretary

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the State and County aforesaid, certify that _____, personally came before me this day and acknowledged that (s)he is President of _____, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed and sealed in its name by its President..

WITNESS my hand and official seal, this ____ day of _____, 2021.

Notary Public

My commission expires: _____

**[REST OF PAGE INTENTIONALLY BLANK.
NEW HANOVER COUNTY DIGITAL SIGNATURE PAGE FOLLOWS EXHIBIT A]**