

**Greenwood Park Master Plan
Town of Biltmore Forest, North Carolina
Professional Services Agreement**

A. PROJECT DESCRIPTION

WithersRavenel, Inc. (CONSULTANT) is pleased to present this AGREEMENT for the professional services of park planning to the Town of Biltmore Forest (CLIENT) for the master plan of Greenwood Park, an existing 1.4-acre site located at the intersection of Greenwood Road and Stuyvesant Road. WithersRavenel will be utilizing a range of professionals to collaborate on the project, which may include landscape architects, planners, civil engineers, GIS staff, technical consultants and graphic artists. The goal of the project is to provide a master plan of proposed improvements to update the Park's existing facilities and propose additional recreation opportunities. The means of accomplishing this will include a design team with a broad range of professional disciplines and by drawing inspiration from trends in current park design. The park master plan will be coordinated with the CLIENT's Stormwater Master Plan currently underway.

The CONSULTANT shall furnish the following Scope of Services for Greenwood Park, consisting of site inventory & analysis, design programming, preliminary and final master planning, and an opinion of probable construction costs. The design development and construction drawing process for this facility is not included in this AGREEMENT.

B. SCOPE OF SERVICES

Task 1- Site Inventory & Analysis

The CONSULTANT will prepare an aerial base with available survey and GIS data and identify key assets and constraints of the site based on this data. During site visit, significant elements may be identified with GPS unit to mark their location. A composite analysis map will be prepared to serve as a base for park master planning. Specific items to be analyzed may include, but are not limited to:

- ▶ On-site analysis of existing conditions
- ▶ Existing/proposed park access and parking conditions
- ▶ General review and analysis of existing park elements (playground equipment, site furnishings, pathways, pavilions)

Deliverables (paper and .pdf formats):

- ▶ *Site analysis and existing conditions memorandum*
- ▶ *Equipment and facilities evaluation and analysis*

Task 2 – Preliminary Conceptual Plan

The CONSULTANT will develop a preliminary conceptual site design for the Park and will present this concept to CLIENT for review. These options will identify and locate any new activity spaces, amenities, pedestrian walks and trails, connections to adjacent neighborhoods, potential landscape enhancement, and storm water management concepts, if applicable. After review with the CLIENT, the CONSULTANT will refine (if needed) the design in preparation for additional review.

Task 3 - Public Comments

The CONSULTANT will facilitate one (1) informational open house to gather input and comments on the conceptual plan. The concept will be presented with a rendered conceptual plan, character sketches, amenity photographs and anticipated park improvement details. The open house will be conducted with formal and informal sessions to allow participation and discussion. The CONSULTANT will coordinate the time with the CLIENT. The CLIENT will arrange for the meeting facility and advertise the meeting to local residents and businesses. Results and a summary of comments from the meeting will be shared and discussed with the CLIENT to determine the design direction of the Final Master Plan.

Deliverables (paper and .pdf formats):

- ▶ *24 x 36 hand-drawn, black and white concept plan (for review)*

- ▶ *24 x 36 hand-drawn, color rendered concept plan*
- ▶ *24 x 36 colored plans of character sketches and/or amenity photos*
- ▶ *Summary memorandum of comments and findings from public presentation*

Task 4 - Preliminary Master Plan

Using feedback from the CLIENT and the open house, the park concept will be refined into a single draft master plan for review by CLIENT. Important issues to be addressed at this level will include the scope and location of site elements and potential phasing opportunities. Americans with Disabilities Act (ADA) and CPTED (Crime Prevention through Environmental Design) compliance techniques will be employed.

Task 5 - Opinion of Probable Construction Costs

Base on the Final Master Plan Design, the CONSULTANT shall prepare an Opinion of Probable Construction Costs. The anticipated costs will be based on the design, the CONSULTANT's past project experience and industry standards. The Opinion of Probable Construction Costs will be used to assist the CLIENT and CONSULTANT in discussions of possibly phasing proposed improvements.

Task 6 - Final Master Plan Presentation

The Final Master Plan will be prepared and presented at a Board of Commissioners meeting. Exhibits will include analysis graphics, a final rendered site master plan, other illustrative graphics, and precedent images for amenities. Comments from the meeting will be compiled for inclusion in the final plan.

Task 7 - Final Master Plan

Based on any remaining refinements identified during the Commissioners' meeting, the CONSULTANT will finalize the Master Plan for the Park. This final plan will include a narrative and graphic compilation of the proposed park improvements.

Deliverables (paper and .pdf formats):

- ▶ *24 x 36 color rendered, computer-drawn, illustrative master plan*
- ▶ *Cost estimate spreadsheet in Excel format (.xls)*
- ▶ *Summary memorandum of comments and findings from public presentation*

C. ADDITIONAL SERVICES / EXCLUSIONS

Additional requested progress meetings or excluded tasks that are not included in the above listed scope of services are considered additional services. The CONSULTANT will furnish or obtain from others additional services that are not covered under Section B or specifically excluded, if requested in writing by the CLIENT, and accepted by the CONSULTANT. Additional services shall be paid by the CLIENT in accordance with the Fee Schedule outlined in Exhibit II. The proposal does not include following:

GENERAL EXCLUSIONS:

- ▶ Structural and or foundation design
- ▶ Public art design or commissioning
- ▶ Detailed amenity/playground design for final product selection
- ▶ Boundary, Topographic and Tree Surveys
- ▶ Geotechnical investigations
- ▶ Design Development, Construction Drawings, Specifications and Permits
- ▶ Mechanical, Electrical and/or Plumbing Design
- ▶ Utility relocation coordination
- ▶ Off-site easement acquisition
- ▶ Design of off-site structures, facilities and utilities
- ▶ Air, water and noise quality testing plus community impact studies
- ▶ Hazardous material surveying
- ▶ Emergency evacuation plans

- ▶ Endangered Species Identification studies or Environmental Permitting
- ▶ Irrigation Design
- ▶ Site power or electrical design
- ▶ Landscape Planting Design
- ▶ Detailed Site Lighting and Specialty Lighting Design
- ▶ PARTF Grant application and administration
- ▶ LEED/Sustainable Site design certification
- ▶ Serving as an expert witness for the CLIENT in any litigation involving the project
- ▶ Presentations to government agencies other than the CLIENT

Note: This list is not all inclusive and the Scope of Services defines the services provided by WithersRavenel for this proposal.

D. CLIENT RESPONSIBILITIES

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

- ▶ Designate in writing a person to act as the CLIENT's representative with respect to the work to be performed under this AGREEMENT; and such person shall have the complete authority to CLIENT's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered under this AGREEMENT.
- ▶ Arrange for and make provision for the CONSULTANT to enter the subject property as required for the CONSULTANT to perform services under this AGREEMENT.
- ▶ Provide and arrange a venue for all project meetings.
- ▶ Provide all criteria and full information as to the CLIENT's requirements for the project, and furnish copies of any prior survey documents, deeds, reports, master plans, and design and construction standards.
- ▶ CLIENT shall be responsible for acquisition of all off-site utility and/or construction easements if they become applicable for this project.
- ▶ Give prompt written notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect or non-conformance of the work
- ▶ Direct the CONSULTANT to provide Additional Services as stipulated in Section C of this Agreement or other services as required; and

E. COMPENSATION FOR SERVICES

Basic Services

The CONSULTANT proposes to provide the Scope of Services outlined in Section B for a lump sum amount. The budgeted total fee estimate for this contract amendment is a NOT TO EXCEED figure of Eight Thousand, Seven Hundred and Fifty Dollars (\$8,750.00) as detailed below. This estimate has been provided in good faith and may not be exceeded without being substantiated and mutually agreed by the CONSULTANT and the CLIENT.

The CONSULTANT will submit monthly invoice statements to the CLIENT for all work completed. The amount of the statement will be based on the percentage of the project accomplished during the billing period. The CLIENT agrees to make prompt monthly payments in response to the monthly statements. Interest shall be charged at the rate of one and one-half (1.5) percent per month on all balances due over 90 days from date of invoice.

Reimbursable Expenses

Reimbursable expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by THE CONSULTANT or our consultants in the interest of the Project. These expenses will be billed in accordance with Exhibit II and include but are not limited to the following:

- ▶ Mileage/Travel (for all meetings, site visits, public outreach)
- ▶ Courier Trips
- ▶ Prints/document copies (includes schematics, color renderings, plan drawings)
- ▶ Postage/FedEx
- ▶ Review Fees (if applicable)

Reimbursable expenses will be invoiced at actual cost and are estimated to be Four Hundred Dollars (\$400.00).

F. TIMELINE FOR SERVICES

The CONSULTANT agrees to commence work upon receipt of written notice to proceed from the CLIENT. It is anticipated that this project will take approximately six (6) weeks from the Notice to Proceed. The CONSULTANT will not be held responsible for any delays in time of completion resulting from:

- ▶ The CLIENT's failure to carry out any of the responsibilities listed under Section A and D in a timely manner
- ▶ CLIENT requesting Additional Services as outlined in Section C
- ▶ Any other circumstances beyond the control of the CONSULTANT

The time required to complete the design services listed in Section B (as well as Section C - Additional Services) will be extended by negotiation in the event the CONSULTANT is delayed by circumstances as listed in the above.

OFFERED BY:

ACCEPTED BY:

WithersRavenel

Town of Biltmore Forest

Gary E. Warner, ASLA, AICP Date
Director, Parks and Recreation

Jonathan Kanipe Date
Town Manager

EXHIBIT I

Standard Terms and Conditions

WithersRavenel, Inc.

The proposal submitted by WithersRavenel, INC. ("CONSULTANT") is subject to the following terms and conditions (collectively referred to as the "Agreement") and, by accepting the proposal, the services, or any part thereof, the CLIENT agrees and accepts the terms and conditions outlined below:

1. Payment:

- a) The CLIENT will pay CONSULTANT for services and expenses in accordance with periodic invoices to CLIENT and a final invoice upon completion of the services. Each invoice is due and payable in full upon presentation to CLIENT. Invoices are past due after 30 days. Past due amounts are subject to interest at a rate of one and one-half percent per month (18% per annum) on the outstanding balance from the date of the invoice.
- b) If the CLIENT fails to make payment to the CONSULTANT within 45 days after the transmittal of an invoice, the CONSULTANT may, after giving 7 days written notice to the CLIENT, suspend services under this Agreement until all amounts due hereunder are paid in full. If an invoice remains unpaid after 90 days from invoice date, the CONSULTANT may terminate the Agreement and/or initiate legal proceedings to collect the fees owed, plus other reasonable expenses of collection including attorney's fees.

2. Notification of Breach or Default: The CLIENT shall provide prompt written notice to the CONSULTANT if CLIENT becomes aware of any breach, error, omission or inconsistency arising out of CONSULTANT's work or any other alleged breach of contract by the CONSULTANT. The failure of CLIENT to provide such written notice within ten (10) days from the time CLIENT became aware of the fault, defect, error, omission, inconsistency or breach, shall constitute a waiver by CLIENT of any and all claims against the CONSULTANT arising out of such fault, defect, error, omission, inconsistency or breach. Emails shall be considered adequate written notice for purposes of this Agreement.

3. Standard of Care: CONSULTANT shall perform Agreement for CLIENT in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of professionals providing the same services in the same or a similar locality as the project. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THAT WILL OR CAN ARISE OUT OF THE SERVICES PROVIDED BY CONSULTANT OR THIS AGREEMENT.

4. Waiver of Consequential Damages/Limitation of Liability: CLIENT agrees that CONSULTANT's aggregate liability for any and all claims that may be asserted by CLIENT is limited to \$50,000 or to the fee paid to CONSULTANT under this Agreement, whichever is greater. Both CLIENT and CONSULTANT hereby waive any right to pursue claims for consequential damages against one another, including any claims for lost profits.

5. Representations of CLIENT: CLIENT warrants and covenants that sufficient funds are available or will be available upon receipt of CONSULTANT's invoice to make payment in full for the services rendered by CONSULTANT, and that such payments shall be made in a timely fashion.

6. Ownership of Instruments of Service:

- a) All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the CONSULTANT as instrument of service, shall remain the property of the CONSULTANT. The CONSULTANT shall retain all common law, statutory and other rights, including the copyright thereto. In the event of termination of this Agreement and upon full payment of fees owed to CONSULTANT, CONSULTANT shall make available to CLIENT copies of all plans and specifications.
- b) CONSULTANT will provide the CLIENT, at no cost to the CLIENT, five (5) complete copies of all reports, plans and specifications and will also provide copies of the same in electronic format, to the CLIENT. CLIENT is authorized to use such reports, plans and specifications in the operation, maintenance, repair and replacement, if necessary, of all or part of its park improvements.

7. Change Orders: CONSULTANT will treat as a change order any written or oral order (including directions, instructions, interpretations or determinations) from CLIENT which request changes in the Agreement or CONSULTANT's scope of work. CONSULTANT will give CLIENT written notice within ten (10) days of a Change Order of any resulting increase in CONSULTANT's fees.

8. Opinion of Cost/Cost Estimates: Since the CONSULTANT has no control over the cost of labor, materials, equipment of services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, any and all opinions as to costs rendered hereunder, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional familiar with the construction industry; but the CONSULTANT cannot and does not guarantee the proposals, bids or actual costs and will not vary significantly from opinions of probable costs prepared by it. If at any time the CLIENT wishes greater assurances as to the amount of any costs, he shall employ an independent cost estimator to make such determination.

9. Assignment and Third Parties: Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the CLIENT and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the CLIENT and the CONSULTANT and not for the benefit of any other party. Neither the CLIENT nor the CONSULTANT shall assign, sublet, or transfer any rights under or interests in this Agreement without the written consent of the other which shall not be unreasonably withheld. However, nothing contained herein shall prevent or restrict the CONSULTANT from employing independent subconsultants as the CONSULTANT may deem appropriate to assist in the performance of services hereunder.

10. **Project Site:** Should CLIENT not be owner of the project site, then CLIENT agrees to notify the site owner of the possibility of unavoidable alteration and damage to the site. CLIENT further agrees to indemnify, defend and hold CONSULTANT harmless against any claims by the CLIENT or persons having possession of the site through the Owner which are related to such alteration or damage.

11. **Access to Site:** CLIENT is responsible for providing legal and unencumbered access to site, including securing all necessary site access agreements or easements, to the extent necessary for the CONSULTANT to carry out his services.

12. **Survival:** All of CLIENT's obligations and liabilities, including but not limited to, its indemnification obligations and limitations, and CONSULTANT's rights and remedies with respect thereto, shall survive completion of the expiration or termination of this Agreement.

13. **Termination:** Either party may terminate the Agreement with or without cause upon ten (10) days advance written notice, if the other party has not cured or taken reasonable steps to cure the breach giving rise to termination within the ten (10) day notice period. If CLIENT terminates without cause or if CONSULTANT terminates for cause, CLIENT will pay CONSULTANT for all costs incurred, non-cancelable commitments, and fees earned to the date of termination and through demobilization, including any cancellation charges of vendors and subcontractors, as well as demobilization costs.

14. **Severability:** If any provision of this Agreement, or application thereof to any person or circumstance, is found to be invalid then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by the law.

15. **No Waiver:** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or difference in character.

16. **Merger, Amendment:** This Agreement constitutes the entire Agreement between the CONSULTANT and the CLIENT and all integrated negotiations, written and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the CONSULTANT and the CLIENT

17. **Unforeseen Occurrences:** If, during the performance of services hereunder, any unforeseen hazardous substance, material, element of constituent or other unforeseen conditions or occurrences are encountered which, affects or may affect the services, the risk involved in providing the service, or the recommended scope of services, CONSULTANT will promptly notify CLIENT thereof. Subsequent to that notification, CONSULTANT may: (a) if practicable, in CONSULTANT's sole judgment and with approval of CLIENT, complete the original scope of services in accordance with the procedures originally intended in the Proposal; (b) Agree with CLIENT to modify the scope of services and the estimate of charges to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated herein; or (c) Terminate the services effective on the date of notification pursuant to the terms of the Agreement.

18. **Force Majeure:** Should completion of any portion of the Agreement be delayed for causes beyond the control of or without the fault or negligence of CONSULTANT, including force majeure, the reasonable time for performance shall be extended for a period at least equal to the delay and the parties shall mutually agree on the terms and

conditions upon which Agreement may be continued. Force majeure includes but is not restricted to acts of God, acts or failures of governmental authorities, acts of CLIENT's contractors or agents, fire, floods, epidemics, riots, quarantine restrictions, strikes, civil insurrections, freight embargoes, and unusually severe weather.

19. **Safety:** CONSULTANT is not responsible for site safety or compliance with the Occupational Safety and Health Act of 1970 ("OSHA"). Job site safety remains the sole exclusive responsibility of CLIENT or CLIENT's contractors, except with respect to CONSULTANT'S own employees. Likewise, CONSULTANT shall have no right to direct or stop the work of CLIENT's contractors, agents or employees.

20. **Dispute Resolution/Arbitration:** CLIENT and CONSULTANT agree, with respect to any claim or other dispute arising out of this agreement, that the parties will first attempt to resolve the claim or dispute through informal negotiation. Either CLIENT or CONSULTANT may initiate this process by submitting written demand on the other party. If the claim or dispute cannot be resolved through informal dispute or resolution within thirty days from the date of written demand, CLIENT and CONSULTANT agree to participate in non-binding mediation before a mediator certified to conduct Superior Court mediations in North Carolina with said mediation to be completed within 60 days. If the claim or dispute cannot be resolved in mediation, either Client or Consultant may file a civil action in the Superior Court for the 28th Judicial District in North Carolina."

21. **Independent Contractor:** In carrying out its obligations, CONSULTANT shall be acting at all times as an independent contractor and not an employee, agent, partner or joint venturer of CLIENT. CONSULTANT's work does not include any supervision or direction of the work of other contractors, their employees or agents, and CONSULTANT's presence shall in no way create any liability on behalf of CONSULTANT for failure of other contractors, their employees or agents to properly or correctly perform their work

22. **Hazardous Substances:** CLIENT agrees to advise CONSULTANT upon execution of this Agreement of any hazardous substances or any condition existing in, on or near the Project Site presenting a potential danger to human health, the environment or equipment. By virtue of entering into the Agreement or of providing services, CONSULTANT does not assume control of, or responsibility for, the Project Site or the person in charge of the Project Site or undertake responsibility for reporting to any federal, state or local public agencies, any conditions at the project site that may present a potential danger to the public, health, safety or environment except where required of CONSULTANT by law. In the event CONSULTANT encounters hazardous or toxic substances or contamination significantly beyond that originally represented by CLIENT, CONSULTANT may suspend or terminate the Agreement. CLIENT acknowledges that CONSULTANT has no responsibility as a generator, treater, storer, or disposer of hazardous or toxic substances found or identified at a site and CLIENT agrees to defend, indemnify, and hold harmless CONSULTANT, from any claim or liability, arising out of CONSULTANT's performance of work under the Agreement and made or brought against CONSULTANT for any actual or threatened environmental pollution or contamination except to the extent that CONSULTANT has negligently caused such pollution or contamination.

23. **Choice of Law:** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of North Carolina, excluding only its conflicts of laws principles.

24. **Construction Services:** If construction administration and review services are requested by the CLIENT, CLIENT agrees that such administration, review, or interpretation of construction work or documents by CONSULTANT shall not relieve any contractor from liability in regard to its duty to comply with the engineering standards

for the Project and shall not give rise to a claim against a contractor's failure to hold in accordance with the applicable plans, specifications or standards.

25. **Field Representative:** If CONSULTANT provides field services or construction observation services, the presence of the CONSULTANT's field personnel will only be for the purpose of providing observation and field testing of specific aspects of the Project. Should a contractor be involved in the Project, the CONSULTANT's responsibility does not include the supervision or direction of the actual work of any contractor, its employees or agents. All contractors should be so advised. Contractors should also be informed that neither the presence of the CONSULTANT's field representative nor the observation and testing by the CONSULTANT shall excuse contractor in any way for defects in contractor's work. It is agreed that the CONSULTANT will not be responsible for job or site safety on the Project and that the CONSULTANT does not have the right to stop the work of any contractor.

26. **Submittals:** CONSULTANT's review of shop drawings and other submittals is to determine conformity with the design concept only. Review of shop drawings and submittals does not include means, methods, techniques or procedures of construction, including but not limited to, safety requirements.