

859



### Town of Nags Head

Post Office Box 99  
Nags Head, North Carolina 27959  
Telephone 252-441-5508  
Fax 252-441-0776  
www.townofnagshead.net

NORTH CAROLINA  
DARE COUNTY

PURCHASE ORDER #20100594

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

*M.T.A.*  
(SELLER initials)

THIS CONTRACT is made and entered into this the 22<sup>nd</sup> day of March 2010, by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and Pungo Machine, Inc. PO Box 188, 26507 Highway 264 East Pantego, NC. 27860, (hereinafter referred to as "SELLER"), party of the second part.

1. ITEMS TO BE PROVIDED AND AGREED CHARGES

SELLER hereby agrees as follows:

To furnish one 81" wide rock bucket with slats on 1-1/2" centers, 2-1/2 yd. To fit a JD 444 quick hitch, per specifications submitted on 2/8/2010 (copy attached) in the amount of \$10,200.00 (ten thousand two hundred dollars and no cents), exclusive of sales tax. This item is hereinafter referred to as "the Equipment."

It is mutually agreed by and between the TOWN and SELLER that SELLER will provide the Equipment required under this contract not later than by April 24, 2010 with time being of the essence. If SELLER fails to meet this deadline, the TOWN will be damaged thereby, and because the amount of the TOWN's damages, inclusive of expenses for inspection, superintendence and necessary traveling expenses is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that the amount of such damages shall be \$100.00 as liquidated damages for every day's delay in furnishing the Equipment beyond the deadline prescribed; and the SELLER hereby agrees that said sum shall be deducted from monies due the SELLER under the contract or, if no money is due the SELLER hereby agrees to pay to the TOWN as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay computed aforesaid.

2. WARRANTIES

The Town agrees to take delivery of the equipment at SELLER's place of business, but shall not be deemed to have accepted the Equipment until the Town has had a reasonable opportunity to inspect and operate the Equipment. SELLER hereby expressly warrants and

represents that the Equipment provided shall be as represented to the Town and shall conform to the description given to the Town; shall be fit for the Town's use and purposes; shall meet the Town's needs and requirements for such equipment; and shall be merchantable. SELLER further represents that it has full right and title to the Equipment and there are no restrictions or limitations on SELLER's right to transfer title and ownership to the Equipment to the Town. SELLER shall be responsible for all repair and replacement as necessary in order for the Equipment to be as warranted.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from March 22, 2010 to May 1, 2010.

4. PAYMENT TO SELLER

The TOWN agrees to pay the price specified for the Equipment in accordance with this contract. Unless otherwise specified, the SELLER shall submit an itemized invoice to the TOWN within thirty (30) days from the Town's receipt of the Equipment. Payment will be processed promptly upon receipt and approval by the TOWN of the invoice.

5. INDEPENDENT SELLER

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

The SELLER is a merchant with respect to goods of the type called for under this contract, and is acting as an independent SELLER in performing this contract.

6. INSURANCE AND INDEMNITY

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

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

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

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

The SELLER upon request by the TOWN shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the TOWN verifying the existence of any insurance coverage required by the TOWN. The Certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.

7. HEALTH AND SAFETY

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

8. NON-DISCRIMINATION IN EMPLOYMENT

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

9. GOVERNING LAW

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina.

10. OTHER PROVISIONS

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

11. CONTRACT DOCUMENTS/AMENDMENTS

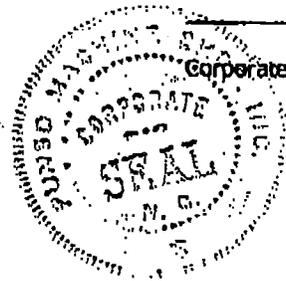
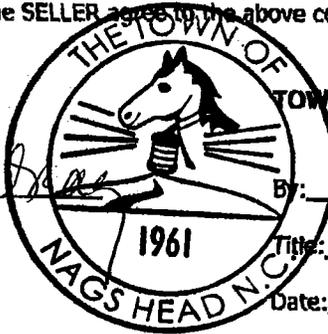
This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents,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

12. SIGNATURES

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

Witnessed or Attested By:

Michelle A. [Signature]  
By: [Signature]  
Title: TOWN MANAGER  
Date: 3/23/10



Corporate Seal:

SELLER

By: M.T. Ahearn  
Printed Name: M.T. Ahearn  
Title: PRES.  
Date: 03-22-10

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

[Signature]  
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]  
TOWN ATTORNEY



**PUNGO MACHINE, Inc.**

Quote # 10495

(252) 943-6383 P.O. Box 188, 26507 HIGHWAY 264 EAST  
 FAX: (252) 943-2805 PANTEGO, NORTH CAROLINA 27860

**Price Quotation**

**Customer**

Name TOWN OF NAGS HEAD  
 Address ATTN: RALPH  
 City NAGS HEAD State NC ZIP \_\_\_\_\_  
 Phone 252-441-3350 FAX

Date 2/8/2010  
 Prepared shipping Date \_\_\_\_\_  
 Terms: 1/3 DOWN, BALANCE C.O.D.  
 FOB Pantego  
 SALESMAN MIKE AHEARN

Qty	Description	Unit Price	TOTAL
1	81" WIDE ROCK BUCKET WITH SLATS ON 2-1/2" CENTERS, 2-1/2 YD. TO FIT A JD 444 QUICK HITCH.	\$10,200.00	\$10,200.00
	PRICE DOES NOT INCLUDE FREIGHT		
	SubTotal		\$10,200.00
	Shipping & Handling		\$0.00
	Taxes NC		\$790.50
	<b>TOTAL</b>		<b>\$10,990.50</b>

Quote Valid for: **30 DAYS**

*CONDITIONS: The prices and terms on this quotation are not subject to verbal changes or other agreements unless approved in writing by PUNGO MACHINE, INC. All quotations and agreements are contingent upon strikes, accidents, fires, availability of materials and all other causes beyond our control. Prices are based on costs and conditions existing on date of quotation and are subject to change by Seller before final acceptance. When quotation specifies material to be furnished by the purchaser, ample allowance must be made for reasonable spoilage and material must be of suitable quality to facilitate efficient production. Conditions not specifically stated herein shall be governed by established trade customs. Terms inconsistent with those stated herein which may appear on Purchaser's formal order will not be binding on the Seller.*

**MIKE AHEARN**

PURCHASE ORDER



THE TOWN OF NAGS HEAD

P.O. BOX 99  
 NAGS HEAD, NC 27959  
 TEL (252) 441-5508  
 FAX (252) 441-4680

PURCHASE  
 ORDER #

20100594-00 FY 2010  
 Page Number: 1

PURCHASE ORDER NUMBER REQUIRED ON ALL INVOICES

MAIL INVOICE TO:

ATTN: ACCOUNTS PAYABLE  
 P.O. BOX 99  
 NAGS HEAD, NC 27959

**V**  
**E**  
**N**  
**D**  
**O**  
**R**

PUNGO MACHINE INC  
 PO BOX 188  
 PANTEGO, NC 27860

**S**  
**H**  
**I**  
**P**  
**T**  
**O**

PUBLIC WORKS % KAREN COSTELLO  
 2200 LARK AVE  
 NAGS HEAD, NC  
 27959

Tel 919-943-6363 Requisition

DATE ORDERED	VENDOR NUMBER	DATE REQUIRED	FREIGHT METHOD / TERMS	DEPARTMENT / LOCATION
03/22/10	009448			Public Works Facilities Main
LN	DESCRIPTION / PART NO.	QTY	COST EA	EXT PRICE
001	81" WIDE ROCK BUCKET WITH SLATS ON 1-1/2" CENTERS, 2-1/2 YD. TO FIT A JD 444 QUICK HITCH. 530-577400	1.0 Each	10200.00000	10,200.00
				10,200.00
			PO Total	10,200.00
Please contact the Town of Nags Head if the prices indicated are not correct. The Town of Nags Head will not be responsible for incorrect pricing after the Purchase Order is received by vendor for processing.				

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

FINANCE OFFICER

PURCHASING AGENT