



284

Town of Nags Head

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NORTH CAROLINA
DARE COUNTY

PURCHASE ORDER # 20110370

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

(SELLER initials)

THIS CONTRACT is made and entered into this the 10th day of December 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 Mid-Atlantic Waste Systems, a division of THC Enterprises, Inc., 3600 Koppens Way, Cavalier Industrial Park, Chesapeake, VA 23323-2532 (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 (1) New Autocar 2012 ACX42 chassis, with a 37-yd³ Heil Starr Systems Trailer per the Contractor's bid dated October 29th, 2010 (copy attached) to The Town of Nags Head, with all equipment included in the bid packet (training, inspections, etc.), and an Allison 4500 series transmission. The one (1) year standard warranty, and a sixty (60) month warranty on the engine, transmission, rear end and all hydraulic cylinders shall be included with this truck. The total price of this contract is \$292,589.00 (two hundred ninety-two thousand five hundred eighty-nine dollars and no cents).

Seller shall transfer all right and to the above goods upon delivery.

Contract completion date shall be no more than 210 calendar days from date of the Purchase order issued.

It is mutually agreed by and between the TOWN and SELLER that SELLER will provide the Equipment required under this contract not later than July 8, 2011 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 \$250.00 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 TOWN'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 EQUIPMENT is from December 10th, 2010 to July 18th, 2011.

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 by 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 prior to execution of this contract. 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.

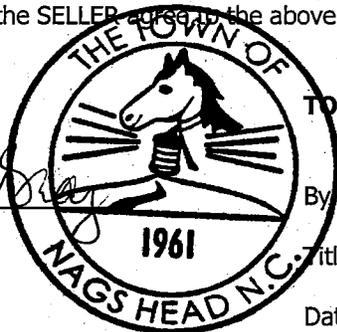
11. CONTRACT DOCUMENTS/AMENDMENTS

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:



TOWN OF NAGS HEAD

Margaret Kemp

By

C. Gray

Title: Town Manager

Date: 12-15-10

Margaret Kemp

Corporate Seal:

SELLER

By: Sandra Brown

Printed Name: Sandra Brown

Title: Order Management

Date: 12-10-10

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

[Signature]
Finance Officer

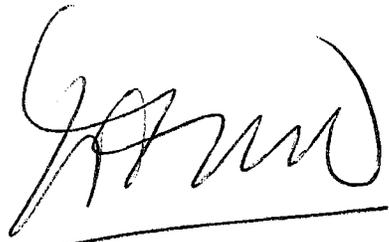
APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]
TOWN ATTORNEY

PRICING INFORMATION

Cab Over Design Right Hand Drive unit:

Chassis Manufacturer Autocar
Chassis Model 2012 ACX42
Loader Manufacturer HEIL
Loader Model STARR
Body Manufacturer HEIL
Body Model 37 CY STARR Trailer


DAVID F. ASKEEW

Pricing for the completed unit \$ 286,589.00

Bid in words: Two hundred-eighty-six thousand, five hundred and eighty nine dollars.

Delivery time for completed unit 150 to 210 calendar days.
(Deduct \$ 13,200.00 to remove 60 month cylinder warranty)

292,589

BID ALTERNATE 1

Basic Unit with Allison 4500 series transmission (cost difference) \$ 6,000.00

BID ALTERNATE 2

Conventional Cab Left Hand Drive Chassis unit:

Chassis Manufacturer Kenworth
Chassis Model 2011 T300
Loader Manufacturer HEIL
Loader Model STARR
Body Manufacturer HEIL
Body Model 37 CY STARR Trailer

Pricing for the completed unit \$ 242,037.00

Bid in words: Two hundred-forty-two thousand and thirty-seven dollars.

Delivery time for completed unit 150 to 210 calendar days.
(Deduct \$ 13,200.00 to remove 60 month cylinder warranty)



12/15/2010 10:20
costellk

TOWN OF NAGS HEAD
PO INQUIRY PROFILE REPORT

PG 2
poinquiry

NAGS HEAD, NC 27959

Ship To Reference

Allocation Details

Org	Obj	Proj	Description	Encumbered Amt	Bud
580	577400		CAPITAL OUTLAY EQU	\$292,589.00	A
			Liquidated	\$ 0.00	
			Canceled	\$ 0.00	
			Allocated Open Encumbrance	\$292,589.00	

** END OF REPORT - Generated by Karen Costello

tyler
12/15/2010