



867

## 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

SERVICE CONTRACT  
PURCHASE ORDER #20100667

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

RB  
(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 22<sup>nd</sup> day of April 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 Barnhill Contracting, Inc., P. O. Box 1050, Kitty Hawk, NC 27949 (hereinafter referred to as "CONTRACTOR"), party of the second part.

1. SERVICES TO BE PROVIDED AND AGREED CHARGES:

The services and/or material to be furnished under this contract (hereinafter referred to collectively as "SERVICES") and agreed charges are as follows:

To furnish materials and labor to complete The Town of Nags Head Adams Lane turn Lane Project; in accordance with the plans entitled "Adams Lane Roadway Improvement Plan", as prepared by Bissell Professional Group, dated 3-18-10 (copy attached), and CONTRACTOR's proposal, dated April 01, 2010 (copy also attached). Work to be done is as described in the proposal attached.

Total contract price is \$9,800.00 (Nine thousand eight hundred dollars and no cents). Price is in accordance with Contractor's proposal, dated April 01, 2010 (copy attached). The work is scheduled to commence no later than April 22, 2010.

It is mutually agreed by and between the TOWN and CONTRACTOR that contract completion date shall be May 31, 2010 with time being of the essence. If CONTRACTOR fails to complete work under this contract by May 31, 2010, 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 finishing the work in excess of the completion date prescribed; and the CONTRACTOR hereby agrees that said sum shall be deducted from monies due the CONTRACTOR under the contract, if no money is due the CONTRACTOR 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. DESCRIPTION OF PROJECT

The following work is to be provided:

1. Remove existing curb
2. Install silt fence
3. Remove one tree
4. Remove soil and haul to Town property
5. Fine grade and place 6" compacted stone base
6. Install new concrete parkway curb
7. Install 2" asphalt paving, type SF 9.5 A
8. Provide Traffic control
9. Backfill curb and dress up

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from April 22, 2010 to June 15, 2010. Either party may nonetheless cancel this contract on thirty (30) days written notice to the other party by certified mail or personal delivery. This contract is subject to the availability of funds to purchase the specified SERVICES and may be terminated at any time if such funds become unavailable.

4. PAYMENT TO CONTRACTOR

The TOWN agrees to pay at the rates specified for SERVICES satisfactorily performed in accordance with this contract. Unless otherwise specified, the CONTRACTOR shall submit an itemized invoice to the TOWN by the end of the month during which SERVICES are performed. Payment will be processed promptly upon receipt and approval by the TOWN of the invoice.

5. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this contract. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'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.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

6. INSURANCE AND INDEMNITY

The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR is for the acts and omissions of persons directly employed by it.

In addition, the CONTRACTOR 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 CONTRACTOR is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the CONTRACTOR 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 CONTRACTOR agrees to furnish the TOWN proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

The CONTRACTOR 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 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR 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 CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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

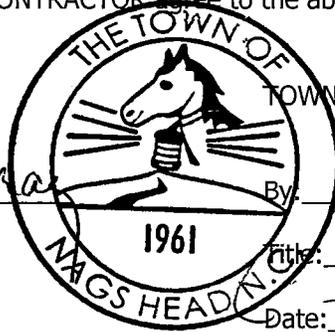
This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents,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

12. SIGNATURES

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

Witnessed or Attested By:

Yvonne H. [Signature]



TOWN OF NAGS HEAD

By: [Signature]

Title: 4-23-10

Date: Town Manager

Tony Please

Corporate Seal:

CONTRACTOR

By: [Signature]

Printed Name: Ricky Brake

Title: Project Manager

Date: 4/22/10

"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

**Contract is contingent upon approval by the Nags Head Board of Commissioners at their April 21<sup>st</sup>, 2010 meeting.**



# BARNHILL CONTRACTING COMPANY

## PROPOSAL

4704 North Croatan Highway, P.O. Box 1050  
Kitty Hawk, North Carolina 27949-1050

GENERAL CONTRACTORS

(252) 261-2207 Phone • (252) 261-1093 Fax

Project/Workorder No. \_\_\_\_\_

PROPOSAL SUBMITTED TO <b>Town of Nags Head</b>	PHONE <b>442-1122</b> FAX-<fax>	DATE <b>4-01-10</b>
STREET <b>P.O. box 99</b>	JOB NAME <b>Adams Lane</b>	
CITY, STATE AND ZIP CODE <b>Nags Head, N.C. 27959</b>	JOB LOCATION <b>Nags Head, N.C.</b>	
ATTENTION <b>Dave Clark</b>		

We include the following in accordance with plans by BPG dated 3-18-10:

1. remove existing curb
2. silt fence
3. remove one tree
4. remove soil and haul to town property
5. fine grade and place 6" compacted stone base
6. new concrete parkway curb
7. 2" asphalt paving, type SF 9.5 A
8. traffic control
9. backfill curb and dressup

**RECEIVED**  
APR - 1 2010  
TOWN OF NAGS HEAD  
PUBLIC WORKS DEPT

Total price \$ 9,800.00

The following items are not included:

- Removal, repair, or relocation of any irrigation or utility lines
- Pavement marking
- Testing
- Landscaping work

### PAYMENT TO BE MADE AS FOLLOWS:

**MONTHLY ESTIMATES. NET UPON RECEIPT OF INVOICE WITH A 1-1/2% MONTHLY SERVICE CHARGE ON ACCOUNTS OVER THIRTY (30) DAYS PAST DUE WHICH IS AN 18% ANNUAL RATE.**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature \_\_\_\_\_  
**Ricky Brake**

Note: This proposal may be withdrawn by us if not accepted within 30 days.

**Acceptance of Proposal** — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Your project will not be scheduled until we receive your signed acceptance.

Signature \_\_\_\_\_

Date of Acceptance \_\_\_\_\_





04/22/2010 09:01  
costellk

TOWN OF NAGS HEAD  
PO INQUIRY PROFILE REPORT

PG 2  
poinquiry

570	577300	CAPITAL OUTLAY OTH	\$9,800.00	U
		Liquidated	\$ 0.00	
		Canceled	\$ 0.00	
		Allocated Open Encumbrance	\$9,800.00	

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\*\* END OF REPORT - Generated by Karen Costello

10/22/2010 10:00 AM  
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**Town of Nags Head**

Post Office Box 99  
Nags Head, North Carolina 27959  
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**Adams Lane Left Turn Lane Project**

**Contract Change Order Number 1**

Dated May 5, 2010

NORTH CAROLINA  
DARE COUNTY

SERVICE CONTRACT  
PURCHASE ORDER # 201000667

THIS CONTRACT CHANGE ORDER is made and entered into this the 5<sup>th</sup> day of May 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 Barnhill Contracting Company, P.O. Box 1050, Kitty Hawk, NC 27949-1050 (hereinafter referred to as "CONTRACTOR"), party of the second part.

**1. CHANGES TO SERVICES TO BE PROVIDED/ AND AGREED/ COMPLETION TIME**

This change order involves the delivery and placement of 17.0 tons of additional asphalt, at \$125.00 per ton. Total cost of this change order is \$2,125.00 (Two thousand one hundred twenty-five dollars and no cents), in accordance with CONTRACTOR's Change Proposal, dated 30-Apr-10 (copy attached). The additional asphalt was necessitated in order to avoid the creation of a serious drainage problem along the "seam" between the new pavement and the existing eastbound lane of Adams Lane. By paving the entire section (both the new left turn lane and the existing straight/right turn lane) with a continuous slope, stormwater will now sheet flow off the road and not accumulate on the pavement, creating a significant safety hazard.

Original Contract price:	\$9,800.00
Amount added by this CO (No.1)	<u>\$2,125.00</u>
Revised Total Contract amount:	\$11,925.00

This Change Order involves no change to the contract completion date of May 26, 2010.

2. SIGNATURES

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

Witnessed or Attested By:



**TOWN OF NAGS HEAD**

By: 

Title: Town Manager

Date: 5-7-10

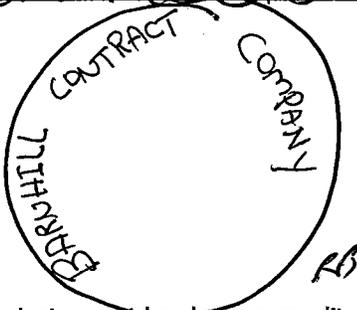


**CONTRACTOR**

By: 

Title: Project Manager

Date: 5/6/10



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

  
Finance Officer

This Contract is Contingent upon Board Approval on 5/5/10.



**BARNHILL  
CONTRACTING  
COMPANY**

P.O. BOX 1050  
KITTY HAWK, NORTH CAROLINA 27949-1050  
phone 252 261-2207  
fax 252 261-1093

job name

Adams Lane

**CHANGE PROPOSAL**

**CHANGE ORDER #1**

date

30-Apr-10

Item No.	Item Description	Quantity	Unit	Unit Price	Price
1	Additional asphalt for wedging and overlay of existing pavement	17.00	TN	\$ 125.00	\$ 2,125.00
		total		ADD	\$ 2,125.00

original contract		\$	9,800.00
revised total before this change order		\$	9,800.00
amount this change order	ADD	\$	2,125.00
new total contract to date		\$	11,925.00

Barnhill Contracting

date

*[Signature]*

4-30-10

Owner  
acceptance

date

**NOTES:**

- This change is required because construction of the new asphalt to the design elevations would not prevent water from being trapped on the old pavement/new pavement interface. The existing pavement which was designed to be butt joint tied to the new asphalt had a local depression which was holding water and would continue to hold water after the new asphalt section was completed along the interface. This was not a result of improper elevation design, it was correcting a preexisting water ponding problem that would have become worse with the additional asphalt area added.