

909

Contract #: RF Fireworks 2

*Adopted 05/21/98  
Amended 07/1/99*

Project Location: Nags Head Fishing Pier

**AGREEMENT**

**THIS AGREEMENT**, entered into this **19th** day of **May 2011**, by and between the Dare County Tourism Board, d/b/a Outer Banks Visitors Bureau (hereinafter called the BUREAU) and Town of Nags Head (hereinafter called the GRANTEE).

**WITNESSETH THAT:**

**WHEREAS**, the BUREAU strives to enhance tourism and tourism opportunities for Dare County; and

**WHEREAS**, the BUREAU wishes to support projects that are consistent with the basic goals and objectives of the Outer Banks Visitors Bureau; and

**WHEREAS**, the BUREAU has determined that certain grants are appropriate to local governmental entities and non-profit organizations for public projects made necessary to offset the impacts of tourism; and

**WHEREAS**, the GRANTEE hereby agrees to administer this contract in accordance with the Fireworks Short Term Restricted Fund Rules & Qualifications, application, Reimbursement Criterion, and the applicable laws and regulations promulgated by local, State and Federal Governmental agencies.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

**I. PROJECT IDENTIFICATION**

- A. Name, address and telephone number of GRANTEE and principal contact person:  
Cliff Ogburn, Town Manager  
Town of Nags Head  
PO Box 99  
Nags Head, NC 27959
- B. Project Title: Fireworks, July 4, 2011
- C. Period Covered by this Agreement: Project work to be done under this contract shall commence on or before **May 19, 2011** and shall be completed no later than **July 10, 2011**, unless the completion date is extended by an amendment to this contract.

D. Project Description: July 4 Fireworks, Nags Head Fishing Pier

E. This agreement is in effect until the project is 100% completed, inspected and a closeout letter is received by the GRANTEE from the BUREAU or term has expired whichever comes first.

F. Project Funding:

Board Amount	\$12,500
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Total Project Cost	\$25,000
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G. Project Conditions (Conditions are all equal and must be complied with):

1. This project is to be consistent with the goals and objectives of the Dare County Tourism Board.
2. No activity is to occur prior to the receipt of all required local, state and federal permits. **Including but not limited to naming the Dare County Tourism Board as additional insured on any and all insurance policies related to the fireworks event.**
3. Authorized improvements, work, etc., and costs will comply with the grant application submitted to and approved by the BUREAU and are limited to the above stated project and location (if applicable).
4. Without limitation, unauthorized changes in the project from the approved site plan, budget and other material submitted with the final grant application will be sufficient cause for the reduction in or complete withdrawal of grant funds at the sole discretion of the BUREAU without recourse.
5. No grant payments will be made by the BUREAU prior to its receipt of itemized documentation as set forth in Section III, Paragraph A herein, evidencing all charges incurred and the dates work was accomplished or materials delivered.
6. Project will be completed fully and closed out prior to the project termination date as set forth in Section I, Paragraph C herein.
7. Requirement for reimbursement for approved project must have the following:
  - (a) Approvals from all organizations directly or indirectly involved in proposed project must agree with all terms and conditions outlined.

- (b) Provide complete accounting records, including original invoice copies, copies of cancelled checks, and contracts.
  - (c) Appropriate recognition of contribution made by the Outer Banks Visitors Bureau to include Bureau logo and "Project Funded In Part By The Outer Banks Visitors Bureau."
  - (d) Approved recognition must include the official logo and the outerbanks.org web address on all promotional material, website and communications.
8. The following items are non-reimbursable: Architectural, engineering, surveying, permits and other forms of professional services, inkind services (ex. administrative salaries of public employees) and any local, state or federal tax.

## **II. PROJECT EXECUTION**

- A. The BUREAU and the GRANTEE mutually enter into this agreement to comply with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps and assurances submitted in conjunction with the project proposal above referenced.
- B. The GRANTEE agrees to execute and complete the approved project in accordance with the approved plan.
- C. Fireworks contracted for or performed by the GRANTEE shall meet the following requirements:
  - 1. Fireworks contracts shall comply with all local, state and federal requirements.
  - 2. Amendments to contracts for construction shall be made by written change order only. Such change orders shall be made a part of the project file and shall be kept available for audit.
  - 3. The GRANTEE agrees to incorporate or cause to be incorporated into all construction contracts the following provisions:

"During the performance of this contract, the Fireworks Provider agrees as follows:

- (a) The Provider will not discriminate against any employee or applicant for

employment because of race, creed, color, or national origin. The Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Provider setting forth the provisions of this non-discrimination clause.

(b) The Provider will, in all solicitation or advertisements of employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin."

D. This project in no way obligates the BUREAU to fund any future projects.

E. Deviations from any part of the project proposal, including but not limited to any terms of this agreement, shall be submitted to the BUREAU's Grant Administrator. Final approval rests with a majority vote of Dare County Tourism Board of Directors.

F. Project plans and specifications shall be available for review by the BUREAU upon request.

G. Project Administration

1. The GRANTEE shall promptly submit such reports as the BUREAU may request.
2. The GRANTEE shall fund all costs of the project until its completion and shall submit paid invoices for all materials, labor and other costs.

### **III. REIMBURSEMENT OF PROJECT COSTS**

A. The GRANTEE agrees to maintain and make available at reasonable times to the BUREAU all bid documents and accurate records of all expenditures for costs applicable to the project agreement and to submit properly certified paid billings for such costs on forms prescribed by the BUREAU, supported by detailed data sheets which will facilitate an audit, at the GRANTEE's expense, of the GRANTEE's records. Complete accounting records, including, but not limited to, original invoices, cancelled checks, contracts and other documents clearly

showing the nature and propriety of all costs incurred under this agreement, shall be retained by the GRANTEE for a period of three years following project completion or until a compliance audit has been completed, whichever is later. All accounting records and supporting documents will clearly show the number of the project to which they are applicable.

- B. The BUREAU agrees to reimburse the GRANTEE only for costs actually incurred by the GRANTEE under terms of this Project Agreement. Should the total costs of the project exceed the Project Cost as set forth in Section I, Paragraph F, those excess costs shall be the sole responsibility of the GRANTEE.
- C. Project costs eligible for reimbursement shall be determined solely by the BUREAU by referral to the proposal as approved by the BUREAU.

#### IV. PROJECT TERMINATION

- A. This agreement may be rescinded, modified or amended only by written agreement executed by all parties hereto.
- B. Failure of the GRANTEE to comply with the terms of this agreement shall be deemed sufficient grounds for the termination of all obligations of the BUREAU hereunder.
- C. Failure by the GRANTEE to comply with the terms of this agreement shall not be the cause for the termination of all obligations of the BUREAU hereunder if, in the judgement of the BUREAU, such failure was due to no fault of the GRANTEE. Furthermore, if said failure of compliance causes or creates additional monetary expenses or obligations then the BUREAU can, but need not, reimburse the GRANTEE for these expenses so long as reimbursement can be made within the total sum of the BUREAU's grant.

#### V. GENERAL PROVISIONS

- A. Conflict of Interest:
  - 1. No official or employee of the GRANTEE who is authorized in his official capacity to negotiate, make, accept, approve, or take part in such decisions regarding any contract or subcontract in connection with this project shall have any financial or other personal interest in such contract or subcontract.
  - 2. No person or firm performing services for the GRANTEE in connection with this project shall have a financial or other personal interest other than his employment or retention by the GRANTEE in any contract or subcontract in connection with

this project.

- 3. The GRANTEE shall be responsible for enforcing the above conflict of interest provisions.

**B. Nondiscrimination:**

- 1. The GRANTEE shall not discriminate against any person on the basis of race, color or national origin in the use of any property or facility developed pursuant to this agreement.
- 2. The GRANTEE shall not discriminate against any person on the basis of residence in the use of the property or facility developed pursuant to this agreement.

**C. Liability: The BUREAU's sole liability under this agreement is to furnish the stated funding for the project in accordance with this agreement.**

Furthermore, the GRANTEE agrees to indemnify and hold the BUREAU and its individual directors harmless from any and all monetary liability, loss or damage which the BUREAU or its directors may suffer as a result of claims, demands, costs or judgments against them or any nature whatsoever resulting from or related to this project, including, but not limited to, those arising out of the contracting for, construction, use or existence of the property or facility, whether present or future, and for third-party personal injuries suffered as a result of any of the above.

*Cliff Ogburn* (SEAL)  
GRANTEE:

BY: *Cliff Ogburn*  
TITLE: *Town Manager*

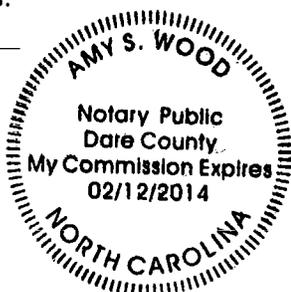
Sworn to and subscribed before me

This 16<sup>th</sup> day of JUNE,

2011.

*Amy S. Wood*  
NOTARY

My Commission Expires:  
02-12-2014



*Sterling Webster* (SEAL)  
~~BOARD, DARE COUNTY TOURISM BOARD~~

BY: *Sterling Webster*  
TITLE: *DCTB Chair*

Sworn to and subscribed before me

this 16<sup>th</sup> day of JUNE,

2011.

*Amy S. Wood*  
NOTARY

My Commission Expires:  
02-12-2014

