Robert C. Edwards
Mayor

Susie Walters
Mayor Pro Tem

Cliff Ogburn
Town Manager

Town of Nags Head
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Nags Head, North Carolina
27959
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M. Renée Cahoon
Commissioner

John Ratzenberger
Commissioner

Marvin Demers
Commissioner

NORTH CAROLINA
DARE COUNTY

PROFESSIONAL SERVICES CONTRACT
PURCHASE ORDER #_____

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

_____
(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 16th day of October, 2014, 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 Albemarle & Associates, Ltd., (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:

The services and materials to be provided under this CONTRACT are those identified in the document entitled "Agreement for Professional Services", which is attached hereto and made a part hereof. The cost of this project shall not exceed $45,000 plus applicable North Carolina taxes.

It is mutually agreed by and between the TOWN and CONTRACTOR that work under this contract will commence no later than October 31, 2014. The contract completion date shall be May 1, 2015.

2. DESCRIPTION OF SERVICES

See the attached scope of services prepared by Albemarle & Associates, Ltd./VHB Inc. for the description of services to be performed under this contract.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from October 14, 2014 until the obligations of the CONTRACT are fulfilled and accepted by the TOWN pursuant to its terms or until the CONTRACT is terminated pursuant to its terms. 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.

Notwithstanding provisions of this Section 3 to the contrary, the following shall survive the termination of this CONTRACT: the provisions of Section 6 regarding indemnity; and the provisions of Section 10.

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 in which SERVICES are completed. 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 by 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. E-VERIFICATION OF EMPLOYEES

The CONTRACTOR represents and warrants that it has ensured and will ensure for itself and each subcontractor that it uses to perform obligations under this CONTRACT, that either:

(1) The CONTRACTOR or subcontractor employs less than 25 employees; or

(2) The CONTRACTOR or subcontractor: (a) employs 25 or more employees who are employed for 9 months or more during a 12-consecutive-month period; and (b) has used the E-Verify program, which program is operated by the United States Department of Homeland Security and is defined in N.C. Gen. Stat. § 64-25 (5), to verify the work authorization of each employee.

10. 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, and the parties hereby submit to venue in and the personal jurisdiction of the said Courts.

11. 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.

12. 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.

13. SIGNATURES

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

TOWN OF NAGS HEAD

Witnessed or Attested By: Carolyn L. Morris

By: Cathy Ogburn

Title: Town Manager

Date: 10-17-14

Witnessed or Attested By: Kimberly C. Angus

Corporate Seal:

CONTRACTOR

By:

Printed Name: James L. Overton Sr.

Title: President

Date: 10-21-14

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

10-15-14

Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

TOWN ATTORNEY

AGREEMENT FOR PROFESSIONAL SERVICES

I. Albemarle & Associates. Ltd. (AAL) agrees to provide professional services for the **Town of Nags Head (CLIENT)** for professional services on the property known as **Dowdy's Amusement Park,** in Nags Head, Dare County, North Carolina. AAL may employ such Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Client. For this agreement, AAL shall mean Albemarle & Associates, Ltd. (AAL) and its subconsultants.

II. Scope of Services and Fees

The following billing items are lump sum costs except for reimbursables presented in Section IV.

A. PLANNING SERVICES

1. Public Meetings and Presentations (105) **$ 5,500.00**

AAL will attend the Nags Head Elementary School Fall Festival with Staff and Committee members to seek input from the general public. AAL will also facilitate a Public Input meeting to solicit comments from the citizens and stakeholders. This will include working with Staff to develop a questionnaire that can be used for the Public input and comments. Said questionnaire can also be used on the Town website. Town Staff will be responsible for collecting and summarizing the questionnaire results.

2. Meetings with Boards (146) **$ 700.00**

AAL will meet with the Town Board of Commissioners on two occasions. The first presentation will be made during the course of the planning process once the Consultant, with the input of the Staff and Committee, develop a conceptual park development plan. The second presentation to the Board will be at the completion of the Master Plan. Services will include preparation of presentation materials and graphics, attendance of the meetings, and presentations to the Board.

3. Meetings with Staff and Committee (146) **$ 9,000.00**

AAL will meet with the Town Staff and the Dowdy's Park Committee to discuss the master plan elements, prioritization of improvements, potential site configurations and amenities. AAL will facilitate a Kick-off meeting, Design Charrette meeting and three additional meetings with the Committee as the conceptual plan is developed and refined to become the Final Park Master Plan. Services include preparation of meeting agendas, minutes and documents for planning, presentation, scheduling, and matters pertaining to the development of a final Master Plan for the Park. The Design Charrette will consist of a meeting at which design alternatives will be laid out by hand on the base map in preliminary fashion. The purpose of this meeting is to involve the Committee in preliminary

program development, planning, and site design framework, which will be refined in subsequent tasks. Up to three alternative development schemes will be developed. The Design Charrette will be scheduled to occur on the morning following the public meeting described in Task 1.

4. Base Map Preparation (301) **$ 1,800.00**

AAL will utilize Town provided surveys, GIS Data, Aerial photography, LIDAR data, and other publicly available information to develop a base map for planning purposes. The base mapping will be used for all planning documents and will serve as the base drawings for the Master Plan graphics. No surveying is included in this task.

5. Programing (301a) **$ 4,000.00**

AAL will provide conceptual programing of the site based upon desired function, facility needs, space requirements, initial and long term cost considerations and other site related features. The programing is intended to assist in the development of the final site configuration, function and desires of the Town. Programing will include determination of uses, compatibility, function, general location of uses, and other site specific issues. AAL will develop a Programming Memo and Development Framework to support the Conceptual Planning in Task 6. This task does not include development of construction cost estimates, but rather a planning-level assessment of potential phased investment in site infrastructure.

6. Conceptual Planning (110) **$ 8,000.00**

AAL will develop up to three conceptual site configurations for the desired park improvements. These conceptual site configurations will be developed based upon the input from the Public and Committee. After the conclusion of the design charrette, conceptual sketch plans will be developed for consideration by the Committee. The conceptual planning will include siting the proposed improvements to ultimately create a Master Park Plan. These plans will show general arrangement and type of intended site improvements. After meeting with the Committee, the desired plan elements will then be incorporated into a final Conceptual Park Plan. AAL will produce color-rendered concept plans showing plan views of the proposed improvements.

7. Final Conceptual Park Plan (302) **$ 6,000.00**

AAL will refine the chosen conceptual plan elements into a single conceptual plan for the Park. This plan will be presented to the Committee and to the Nags Head Board of Commissioners for further comments and suggestions prior to finalizing the Park Master Plan and Report.

8. Construction Cost Estimate (170) **$ 2,500.00**

AAL will develop a preliminary estimate of all site related construction costs based upon the final conceptual park plan. This estimate will be based upon local construction costs and estimated equipment costs recommended. The costs will consider site preparation, engineering design and permitting,

9. Final Report and Master Plan Documents (303) **$ 6,500.00**

AAL will prepare a written report of the proceeding leading up to the development of the Park Master Plan. This document will include a brief history of the site; Public and Committee input, Programing documentation: cost estimates; material recommendations and graphics (in the form of a color-rendered final Concept Plan) for the various planned park development to include a rendered sketch of the site. This document will be developed to be used for budgeting, scheduling and for Grant funding applications. The Final Report and Plan will be presented to both the Committee and to the Public at a Nags Head Board of Commissioners meeting.

CONTRACT TOTAL: **$ 44,000.00**

III. Tentative Project Schedule

Notice Proceed	October 1, 2014
NH Elem School Event	October 4, 2014
Kick Off Meeting w/ Committee	Week of Oct 6
Public Input Session	October 30, 2014
Committee Design Charrette	October 31, 2014
Present Concepts to Committee	Week of Jan 5
Present Final Concepts to Committee	January 29, 2015
Present Final Concepts to BOC	February 4, 2015
Present DRAFT Report & Plan to Committee	March 6, 2015
Present Final Master Plan and Report	April 3, 2015
Present to BOC	Second April Meeting

IV. Payment Schedule

AAL will invoice Client monthly based upon services provided.

These fees do not include any submittal review fees, reproduction cost, or mileage.

Estimated Reproduction Costs	**$ 1,000.00**

V. Invoices

AAL shall submit its invoices to Client on a monthly basis. Invoices are due and payable within 30 days of receipt by the Client.

VI. Attachments and Schedules

The following attachments and schedules are hereby made a part of this Agreement:

(a) General Terms & Conditions for Clients Employing Albemarle & Associates, Ltd. as consultants as revised on February 19, 2009.

(b) Schedule of Fees dated January 1, 2014

THIS AGREEMENT for Professional Services must be fully executed by all parties and received by Albemarle & Associates, Ltd. on or before October 31, 2014. This Agreement for Professional Services becomes null and void if not received by aforesaid date. It is agreed that payment for services shall be made based upon completion of the tasks outlined within the scope of services, as set out in Sections IV and V, and shall not be contingent upon an event such as securing a permit(s), or any other similar event(s).

GENERAL TERMS AND CONDITIONS FOR CLIENTS
EMPLOYING ALBEMARLE & ASSOCIATES, LTD. AS CONSULTANTS

1. Albemarle & Associates, Ltd. (AAL) shall perform the services defined in the attached AGREEMENT and shall invoice the CLIENT. Any estimate of cost to the CLIENT as stated in this Contract shall not be considered as a fixed price, but only an estimate (unless otherwise specifically stated in the AGREEMENT). When estimated compensation amounts have been stated herein and it subsequently becomes apparent to AAL that the total compensation amount thus estimated will be exceeded, AAL shall give Client written notice thereof prior to exceedance, allowing Client to consider its options, including suspension or termination of AAL's services for Client's convenience. Upon notice, Client and AAL promptly shall review the matter of services remaining to be performed and compensation for such services. Client shall either exercise its right to suspend or terminate AAL's services for Client's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by AAL, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Client decides not to suspend the AAL's services during the negotiations and AAL exceeds the estimated amount before Client and AAL have agreed to an increase in the compensation due AAL or a reduction in the remaining services, then AAL shall be paid for all services rendered hereunder. Additional services shall require Client's written authorization prior to being performed. If authorized in writing by Client, AAL shall furnish or obtain from others additional services as described within a supplemental change order agreement.

2. Right of Entry. The CLIENT will provide for right of entry of AAL personnel and all necessary equipment, in order to complete the work.

3. Invoices. AAL shall prepare invoices in accordance with its standard invoicing practices and in a form agreeable to Client. AAL shall submit its invoices to Client on a monthly basis. Invoices are due and payable within 30 days of receipt. If Client fails to make any payment due to the Contractor for services and expenses within 30 days after receipt of Contractor's invoice, then amounts due Contractor will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day and AAL may, after giving seven days written notice to Client, suspend services under this Agreement until Client has paid in full all amounts due for services, expenses, and other related charges. Client waives any and all claims against AAL for any such suspension.

4. Ownership of Documents. All reports, field data, field notes, drawings, specifications, calculations, estimates and other documents prepared by AAL, as instruments of service, shall remain the property of AAL, unless otherwise agreed to. CLIENT agrees that all reports and other work furnished to the CLIENT or his agents, which are not paid for, will be returned upon demand and will not be used by the CLIENT for any purpose whatsoever. AAL will retain all pertinent records relating to the services performed for a period of five years following submission of the final invoice. All final reports and documents shall be the property of the Town of Nags Head without limitation of any type. All final reports, electronic media format (text, data and graphics) and documents shall be furnished by AAL to the Client for information and reference in connection with use on the Project by Client.

5. Standard of Care. Service performed by AAL under this AGREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, express or implied, is made. This is a performance contract and payment for services shall be made based upon completion of the tasks outlined within the scope of services and shall not be contingent upon an event such as securing a permit(s) or any other similar event(s).

6. Insurance. AAL represents and warrants that it and its employees are protected by worker's compensation insurance and that AAL has such coverage under public liability and property damage insurance policies which AAL deems to be adequate. Certificates for all such policies of insurance shall be provided to CLIENT upon request. Within the limits and conditions of such insurance and the provisions of paragraph 6 above pertaining to limitation of liability, AAL agrees to indemnify and save CLIENT harmless from and against any loss, damage, or liability arising from any negligent acts by AAL, its agents, staff and consultants employed by it. AAL shall not be responsible for any loss, damage or liability arising from any acts by CLIENT, its agents, staff and other consultants employed by it.

7. Termination. This AGREEMENT may be terminated by either party upon fifteen (15) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, AAL shall be paid for services performed to the termination notice date and any expenses incurred after the date of termination that were requested by the CLIENT.

8. Assignments. This AGREEMENT and the rights and duties hereunder will not be assigned, subcontracted, or transferred by CLIENT, in whole or in part, without AAL's prior written approval unless the agreement is terminated under Paragraph 8 above or if AAL breaches this agreement.

9 Waivers. No waiver by either party of any default by the other party in the performance of any provision of this AGREEMENT will operate as, or be construed as, a waiver of any future default, whether like or different in character.

10. Authorization to Proceed. Execution of this AGREEMENT by CLIENT will be authorization for AAL to proceed with the Scope of Services, unless otherwise provided for in this AGREEMENT.

11. No Third Party Beneficiaries. This AGREEMENT gives no rights or benefits to anyone other than AAL and the CLIENT and has no third-party beneficiaries.

12. Jurisdiction. The law of the State of North Carolina shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

13. Severability. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. Change Orders. CLIENT may adjust the Scope of Services by either adding to or deleting from the services to be performed. If such adjustment increases or decreases the cost or time required for AAL to complete the Scope of Services, adjusted compensation and/or time will be mutually agreed upon. Additional services provided by AAL will be entitled to additional compensation or extension of time in conformity with the AAL's Schedule of Fees in effect at the time additional services are provided. Additional services shall require Client's written authorization prior to being performed. If authorized in writing by Client, AAL shall furnish or obtain from others additional services as described within a supplemental change order agreement.

Albemarle & ASSOCIATES, LTD.

Schedule of Fees

January 1, 2014

Professional Engineering and Surveying Services

Description	Rate
Principal (PE/PLS)	$185.00 / Hour
Engineer (PE)/ Surveyor (PLS)/Planner (AICP)	$155.00 / Hour
Civil Engineer/Project Manager/Project Planner	$135.00 / Hour
Project Technician/Administrator	$100.00 / Hour
CADD Technician	$ 90.00 / Hour
Survey Crew Chief	$ 95.00 / Hour
Survey Technician	$ 85.00 / Hour
Clerical	$ 60.00 / Hour
GPS Rover Equipment	$ 35.00 / Hour
GPS Base Equipment	$ 35.00 / Hour
Robotic Rover Equipment	$ 20.00 / Hour
Robotic Base Equipment	$ 20.00 / Hour
Boat	$160.00 / Day
Total Station Equipment	$ 15.00 / Hour
Company Vehicles	$ 0.80 / Mile
Reproduction	(COST + 10%)
Outside Services	(COST + 10%)