



## 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 # 1301784

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

Dal  
(CONTRACTOR initials)

THIS CONTRACT is made and entered into this the 24<sup>th</sup> day of January 2013, 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 Earth-Saver LLC., 328 Oak Run, 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:

Provide all necessary materials and labor to construct two walkways from parking lot to steps at Abalone and Blackman Street Beach Access sites. Work at these sites will be as listed on CONTRACTOR's proposal sheet, "Abalone and Blackman Walkway from parking lot to steps" dated 12-6-12 (copy attached). Total cost this work will be **\$5,900.00** (Five thousand nine hundred dollars and no cents) in accordance with the CONTRACTOR's proposal. CONTRACTOR is responsible for final clean up and all work to be in compliance with State and Local codes.

Provide all necessary materials and labor to construct an access at Abalone Street Beach Access site. Work at this site will be as listed on CONTRACTOR's proposal sheet, "Abalone Beach Access" dated 12-6-12 (copy attached). Total cost this work will be **\$20,800.00** (Twenty thousand eight hundred dollars and no cents) in accordance with the CONTRACTOR's proposal. CONTRACTOR is responsible for final clean up and all work to be in compliance with State and Local codes.

Provide all necessary materials and labor to construct an access at Blackman Street Beach Access site. Work at this site will be as listed on CONTRACTOR's proposal sheet, "Blackman Beach Access" dated 12-6-12 (copy attached). Total cost this work will be **\$22,500.00** (Twenty two thousand five hundred dollars and no cents) in accordance with the CONTRACTOR's proposal. CONTRACTOR is responsible for final clean up and all work to be in compliance with State and Local codes.

**Total contract price for all work is \$ 49,200.00 (Forty nine thousand two hundred dollars and no Cents). Price is in accordance with CONTRACTOR's proposals listed above, dated December 16, 2012 (copies attached).**

It is mutually agreed by and between the TOWN and CONTRACTOR that construction under this contract will commence February 1, 2013 and the contract completion date shall be March 30, 2013 with time being of the essence. If CONTRACTOR fails to complete work under this contract by March 30, 2013, 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 sum of **\$500.00** shall be due from CONTRACTOR 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 or, if no money is due to the CONTRACTOR, then 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 PROJECTS

### **Abalone and Blackman walkway from Parking lot to steps:**

Work to include the installation of two runs of 34" x 4" with composite decking at ground level. CONTRACTOR will keep existing walkways from parking lots to stay intact while work is being performed on accesses.

#### **Abalone:**

Work to include removal of access beginning at steps, crossing the dune line and ending at beach.

Replacement walkway will mimic existing walkway but will be raised to clear dune line in compliance with code 18" to bottom of girder.

CONTRACTOR only responsible for tear out of walkway that is visibly noticeable. Not responsible if unseen walkway exists.

See drawings attached.

#### **Blackman:**

Work to include removal of access beginning at steps, crossing the dune line and ending at beach.

Replacement walkway will mimic existing walkway but will be raised to clear dune line in compliance with code 18" to bottom of girder.

Add an additional landing to steps from parking lot to top of dune.

CONTRACTOR only responsible for tear out of walkway that is visibly noticeable. Not responsible if unseen walkway exists.

See drawings attached.

### 3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from January 24, 2013 to April 15, 2013. 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: any provision in Section 1 regarding liquidated damages; the provisions of Section 6 regarding indemnity; and the provisions of Section 9.

### 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. The project, as bid, will be paid on a unit price basis. Invoices will be prepared on the basis of units actually constructed, removed, graded, relocated, etc. No work in excess of those quantities listed on the bid form (attached) will be undertaken without authorization of the TOWN's Project Manager.

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

#### 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:

TOWN OF NAGS HEAD

*Cathy H. Myrtle*  
By: *[Signature]*  
Title: Town manager  
Date: 1/25/13



*[Signature]*  
Corporate Seal:

CONTRACTOR

By: *[Signature]*  
Printed Name: Dennis Saver  
Title: Managing Member  
Date: 1/25/13

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

*[Signature]* 1/20/13  
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

*[Signature]*  
TOWN ATTORNEY





**Earth Saver LLC**

NC GC License # 58599  
Green Building and Specialty Construction  
328 Oak Run, Kitty Hawk, NC 27949  
Cell: 252-256-0848  
Office/FAX 252-261-2931 earthsaverllc@gmail.com

**Proposal**

**Date:** 12-6-12 **Atten:** Ralph Barille  
**To:** Town of Nags Head  
**Address:** P O Box 99  
Nags Head, N C 27959

**Project Description: Blackman Beach Access**

Supply material and labor for the removal and replacement of access.

1. Work to include removal of access beginning at steps, crossing the dune line and ending at beach.
2. Replacement walkway will mimic existing walkway but will be raised to clear dune line in compliance with code 18" to bottom of girder.
3. Add an additional landing to steps from parking lot to top of dune.
4. See attached drawings for details.

Note: Contractor responsible for final clean up and all work to be in compliance with state and local codes.

Contractor only responsible for tear out of walkway that is visually noticeable. Not responsible if unseen walkway exists.

Total Cost: \$Twenty Two Thousand Five Hundred & \_\_\_\_\_ 00. \$22,500.00

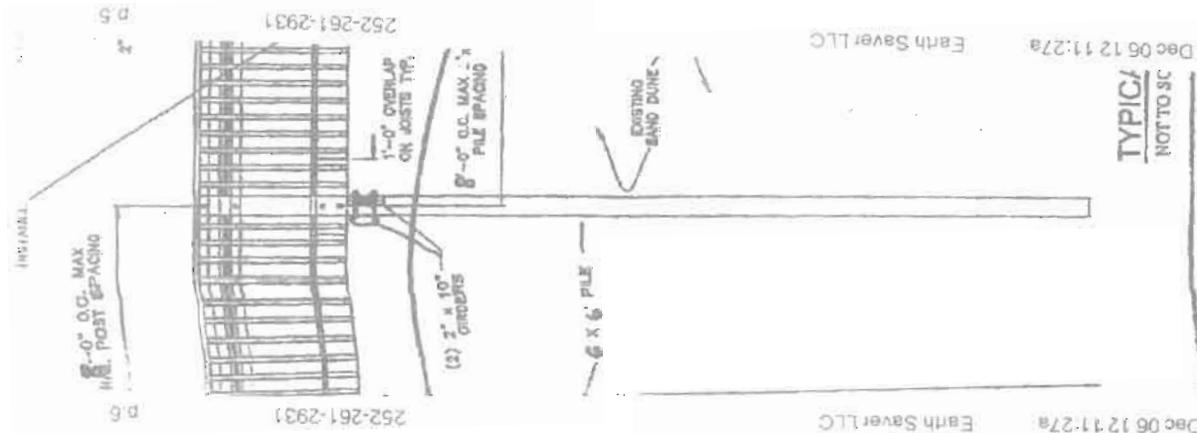
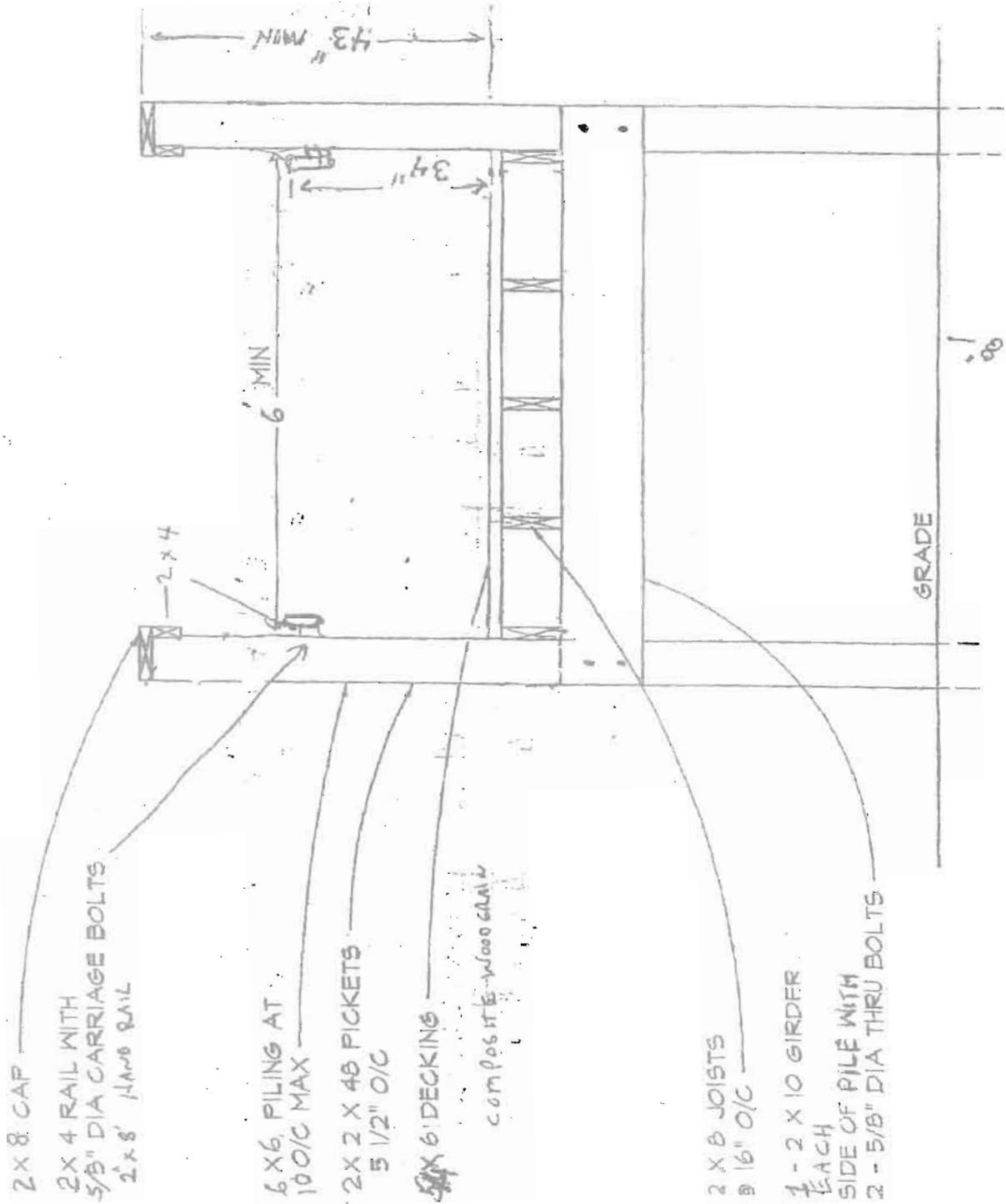
Signed: \_\_\_\_\_

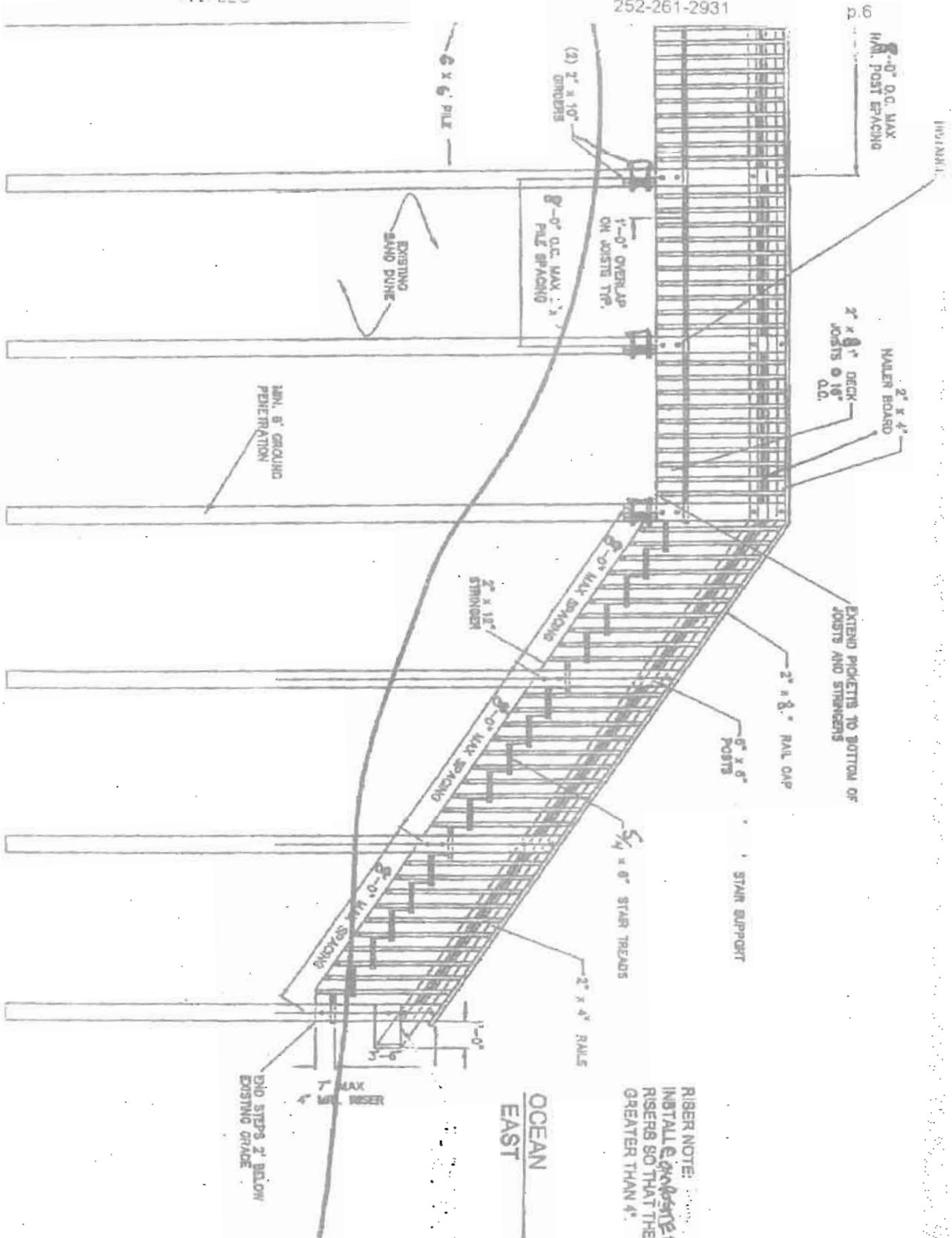
Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_







RISER NOTE:  
 INSTALL 6x6 RISERS 1\"/>

OCEAN  
 EAST

**TYPICAL 6' WIDE ELEVATED WOOD DECK/STAIRWAY DETAIL**

NOT TO SCALE

PUBLIC WORKS % KAREN HEAGY  
TOWN OF NAGS HEAD  
2200 LARK AVE  
NAGS HEAD, NC 27959

13-01784

ORDER DATE: 01/25/13  
REQUISITION NO: R1300530  
DELIVERY DATE:  
STATE CONTRACT:  
F.O.B. TERMS: Destination

VENDOR #: EARTH020

EARTH SAVER LLC  
328 OAK RUN  
KITTY HAWK, NC 27949

Phone: (252)256-0848 Fax: (252)261-2931

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	Abalone and Blackman Projects As per Contract.	3-10-530-4-5773-00 CAPITAL OUTLAY OTHER	49,200.0000	49,200.00
			TOTAL	<u>49,200.00</u>

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.