

Town of Nags Head
Public Works Contract Review Cover Form

Your review and comments are needed no later than:

February 29, 2016

Contract Name : Bonnett to Baltic St. Waterline Extension Contract Originator : Karen Heagy and David Ryan

<input checked="" type="checkbox"/> New contract <input type="checkbox"/> Change Order <input type="checkbox"/> Task Order <input type="checkbox"/> Service Contract <input type="checkbox"/> Equipment Contract <input type="checkbox"/> Engineering Contract <input checked="" type="checkbox"/> Construction Contract		
Reviewer	Approval Date	Revisions to be made
Town Engineer	3-2-16	Made suggested changes
Finance Director	3-1-16	
Town Clerk	3-2-16	
Town Attorney	3-2-16	Made suggested Changes.

Robert C. Edwards
Mayor

Susie Walters
Mayor Pro Tem

Cliff Ogburn
Town Manager



M. Renée Cahoon
Commissioner

John Ratzenberger
Commissioner

Marvin Demers
Commissioner

Town of Nags Head
Post Office Box 99
Nags Head, North Carolina
27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # K002134

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

NAB
(CONTRACTOR initials)

THIS CONTRACT is made and entered into this the 29th day of February 2016, 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 Envirotech Unlimited Construction, LLC, P.O. Box 69 27941, Harbinger, NC 27941, (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:

Providing all materials and labor to perform all of the work in the manner and form as provided by the following enumerated Contract Documents, which are attached hereto and made part thereof as fully contained herein: Instructions to Bidders; Bid Tabulation Form; Re-bid Proposal Form, Standard General Conditions; Supplementary Conditions; Technical Specifications; Performance Bond; Payment Bond; Certificates of Insurance for workers compensation, public liability, property damage, and builder's risk; Addendum 1, and the Drawings entitled **Capital Improvement Project FY 15/16, Baltic St. to Bonnett St. Water System Improvements, Town of Nags Head, North Carolina, dated 11/23/2015 consisting of sheets C1-C3 as prepared by David Ryan, P.E., Town of Nags Head Department of Public Works.**

Total contract price shall be \$ 144,500.00 (One-Hundred & Forty-Four Thousand Five Hundred dollars and no cents) via horizontal directional drill construction method. Price is in accordance with CONTRACTOR'S Re-bid proposal Form, received on February 25, 2016 (copy attached).

It is mutually agreed by and between the TOWN and CONTRACTOR that work under this contract will commence February 29, 2016. The contract substantial completion date shall be May 26, 2016 with time being of the essence. If CONTRACTOR fails to substantially complete work under this contract by May 26, 2016 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 \$400.00 per day 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 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 project generally consists of the extension of the Town of Nags Head Water Main with approximately 1630 l.f. of 8" dia. C-900 pvc waterline and appurtenances, via horizontal direction drill construction method, located within the US 158 (Croatan Highway) eastern right-of-way margin spanning from 2619 S. Croatan Hwy. to 2917 S. Croatan Hwy.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from February 29, 2016 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: any provision in Section 1 regarding liquidated damages; 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 but 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.

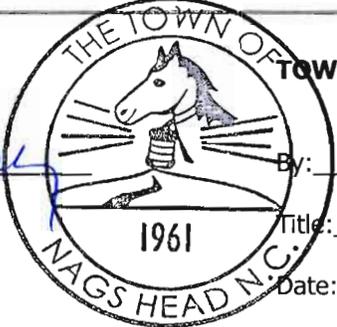
8. NON-DISCRIMINATION IN EMPLOYMENT

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

13. SIGNATURES

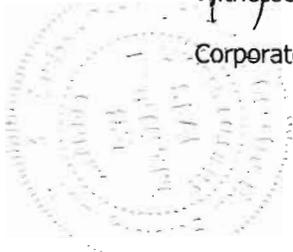
Both the TOWN and the CONTRACTOR agree to the above contract.

Michelle Gray
Witnessed or Attested By:

 **TOWN OF NAGS HEAD**
By: C. Coy
Title: Town Manager
Date: 3/14/16

Kristen J. Lee
Witnessed or Attested By:

Corporate Seal:



CONTRACTOR

By: Nick Brown
Printed Name: Nick Brown
Title: MANAGER
Date: 3/4/2016

"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



TOWN OF NAGS HEAD
 PO BOX 99
 5401 SOUTH CROATAN HIGHWAY
 NAGS HEAD, NC 27959
 Phone: (252)441-5508

Purchase Order/Voucher

THIS NUMBER MUST APPEAR ON ALL INVOICES,
 PACKING LISTS, CORRESPONDENCE, ETC.

NO. 16-02134

SHIP TO

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

VENDOR

Vendor #: ENVIR010

ENVIRO-TECH
 PO BOX 69
 HARBINGER, NC 27941

ORDER DATE: 03/01/16
 DELIVERY DATE:
 STATE CONTRACT:
 VENDOR ACCT NUM:
 VENDOR PHONE #:
 VENDOR FAX #:
 REQUISITION #: R1600794

MAIL INVOICE TO:

ATTN: ACCOUNTS PAYABLE
 P.O BOX 99
 NAGS HEAD, NC 27959

QUANTITY	DESCRIPTION	ACCOUNT NO	UNIT PRICE	TOTAL
1.00	Bonnett-Baltic Watermain Ext Please do not fax po Contract work	61-818-6-5773-00 CAPITAL OUTLAY OTHER	144,500.0000	144,500.00
			TOTAL	=====
				144,500.00

E-Verify Compliance Assurance by Vendor/Contractor: By accepting this purchase order from Town of Nags Head, I verify that I understand that E-Verify program operated by the United States Department of Homeland Security and other federal agencies used to verify the work authorization of newly hired employees pursuant to federal law. Furthermore, I confirm that I am aware of and in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes, which requires that the Contractor participate in E-Verify if it has at least 25 qualified employees. To the best of my knowledge, any subcontractors employed by me as part of this contract are in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes.

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

 FINANCE OFFICER

 PURCHASING AGENT

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 the vendor for purchasing.

FORM OF PERFORMANCE BOND

Date of Contract: February 29, 2016

Date of Execution: March 4, 2016

Name of Principal (Contractor) Enviro-Tech Unlimited Construction Services, LLC
Westfield Insurance Company

Name of Surety: P.O. Box 5001, Westfield Center, OH 44251-5001

Name of Contracting Body: Town of Nags Head

Amount of Bond: One Hundred Forty Four Thousand Five Hundred Dollars and 00/100 (\$144,500.00)

Project Capital Improvement Project FY 15/16, Baltic St. to Bonnett St. Water System Improvements

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ 3 _____ counterparts.

Witness :

[Signature]
(Proprietorship or Partnership)

Attest: (Corporation)

Enviro-Tech Unlimited Construction Services, LLC
Contractor: (Trade or Corporate Name)

By: [Signature]

Title: Owner
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: Nick Brown

Title: Corp. Sec
(Corp. Sec. or Asst. Sec.. only)

(Corporate Seal)



Witness: [Signature]

Trevor Beaver

Westfield Insurance Company
(Surety Company)

By: [Signature]

Title: Jennifer S. Beasley Attorney-in-Fact
(Attorney in Fact)

Countersigned:

[Signature]
Jennifer S. Beasley
(N.C. Licensed Resident Agent)

(Surety Corporate Seal)

Wells Fargo Insurance Services USA, Inc.

8540 Colonnade Center Drive, Suite 111, Raleigh, NC 27615
Name and Address-Surety Agency



Westfield Insurance Company
15801 Brixham Hill Ave., Suite 400
Charlotte, NC 28277
Surety Company Name and N.C. Regional or Branch Office Address

FORM OF PAYMENT BOND

Date of Contract: February 29, 2016

Date of Execution: March 4, 2016

Name of Principal
(Contractor) Enviro-Tech Unlimited Construction Services, LLC
Westfield Insurance Company

Name of Surety: P.O. Box 5001, Westfield Center, OH 44251-5001

Name of Contracting
Body: Town of Nags Head

Amount of Bond: One Hundred Forty Four Thousand Five Hundred Dollars and 00/100 (\$144,500.00)

Project Capital Improvement Project FY 15/16, Baltic St. to Bonnett St. Water System Improvements

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ 3 _____ counterparts.

Witness:

AWB
(Proprietorship or Partnership)

Attest: (Corporation)

Enviro-Tech Unlimited Construction Services, LLC
Contractor: (Trade or Corporate Name)

By: vi

Title: Owner
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: Nick Brown

Title: Corp Sec
(Corp. Sec. or Asst. Sec.. only)

(Corporate Seal)

Westfield Insurance Company
(Surety Company)

By: Jennifer S. Beasley

Title: Jennifer S. Beasley Attorney-in-Fact
(Attorney in Fact)

Witness:

Trevor Beaver
Trevor Beaver

Countersigned:

Jennifer S. Beasley
Jennifer S. Beasley
(N.C. Licensed Resident Agent)

(Surety Corporate Seal)

Wells Fargo Insurance Services USA, Inc.

8540 Colonnade Center Drive, Suite 111, Raleigh, NC 27615
Name and Address-Surety Agency



Westfield Insurance Company
15801 Brixham Hill Ave., Suite 400
Charlotte, NC 28277
Surety Company Name and N.C. Regional or Branch Office Address

POWER NO. _____
General Power of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY, and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having their principal offices in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint **Jennifer S. Beasley** of Raleigh and State of NC their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in their names, place and stead, to execute, acknowledge and deliver the following surety bond:

Surety Bond Number: 4408495
Principal: Enviro-Tech Unlimited Construction Services, LLC
Obligee: Town of Nags Head

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY, and OHIO FARMERS INSURANCE COMPANY:

"BE IT RESOLVED, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents cancelling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon The Company as if signed by the President and sealed and attested by the Corporate Secretary."

"BE IT FURTHER RESOLVED, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000.)

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY, and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 1st day of April, A.D., 2014.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Dennis P. Baus,
National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this 1st day of April, A.D., 2014, before me personally came **Dennis P. Baus**, to me known, who, being by me duly sworn, did depose and say, that he resides in Wooster, Ohio; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY, and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Board of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



By:
David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina ss.:

CERTIFICATE

I, **Frank Carrino**, Secretary of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY, and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Company at Westfield Center, Ohio, this 4th day of March, A.D., 2016.


By:
Frank Carrino, Secretary