



948

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 # 12-02094

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

RB

(CONTRACTOR initials)

THIS CONTRACT is made and entered into this the 26th day of January 2012, 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, (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:

All Drainage Improvement work must be in accordance with the plans prepared by Bissell Professional Group titled Vista Colony West, Project No. 3740, dated 6-14-10 with revisions dated 9-27-11.

Total contract price is \$210,300.00 (Two hundred ten thousand, three hundred dollars and no cents). Price is in accordance with CONTRACTOR's proposal dated 11-14-11 (copy attached).

It is mutually agreed by and between the TOWN and CONTRACTOR that construction under this contract will commence no later than February 18th, 2012. The contract completion date shall be May 15th, 2012 with time being of the essence. If CONTRACTOR fails to complete work under this contract by May 15th, 2012, 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 One hundred dollars and no cents \$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 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

To remove and reconstruct driveways, install culverts in the Town's right-of-way, construct swales and construct a Stormwater Retention Basin on town owned property located on the west side of well field road.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from January 26th, 2012 to May 31st, 2012. 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 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.

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. 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

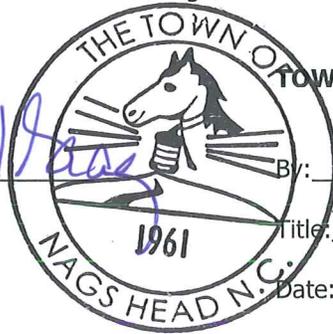
This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents,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

12. SIGNATURES

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

Witnessed or Attested By:

Micelle Hayes



TOWN OF NAGS HEAD

By: [Signature]
Title: TOWN MANAGER

Date: 2/8/12

Tony Pearce

Corporate Seal:

CONTRACTOR

By: [Signature]

Printed Name: Ricky Brake

Title: Estimator/Project Mgr.

Date: 1/30/12

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

[Signature] 2-8-12
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]
TOWN ATTORNEY



Department of Public Works

Administration
Maintenance Garage
Public Facilities Maintenance
Sanitation
Water Distribution
Water Operations

Town of Nags Head

Post Office Box 99
Nags Head, North Carolina 27959
Telephone 252-441-1122
Fax 252-441-3350
www.townofnagshead.net

Dave Clark, P.E.
Public Works Director

Ralph Barile
Deputy Public Works Director

BID FORM
TOWN OF NAGS HEAD – Vista Colony West Drainage Project
Bid Date: November 14, 2011 @ 2:00 pm
Location: Public Works Office

ITEM

Construction of Vista Colony West Drainage Project:

Phase I \$ 135,300.00
Phase II \$ 75,000.00

948



Town of Nags Head

Post Office Box 99
Nags Head, North Carolina 27959
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Fax 252-441-0776
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Vista Colony West Drainage Project

Change Order No. 1

Dated February 6, 2012

NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # 12-02094

THIS CONTRACT Amendment is made and entered into this the 6th day of February 2012, 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.

The Contract dated the 26th day of January 2012 between the Town of Nags Head and Barnhill Contracting Company and without invalidating the original provisions thereof, is hereby amended as follows:

1. Change in Contract Completion Date:

§ 1. is hereby amended to read, "The contract completion date shall be ~~May 15th 2012~~ **May 30th, 2012**. with time being of the essence. If CONTRACTOR fails to complete work under this contract by ~~May 15th 2012~~ **May 30th, 2012** 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 she 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."

§ 3. is hereby amended to read, "The term of this CONTRACT for SERVICES is from January 26th, 2012 to ~~May 31st, 2012~~ **June 15th, 2012**. Either party may nonetheless cancel this contract on thirty (30) days written notice to the other party by certified mail or personal delivery."

2. **Change in Work:**

Perform additional stormwater management infrastructure installation work as generally itemized on Contractor's Change Proposal, dated 24 January 2012 (copy attached hereto) and as specifically described in engineered plans entitled "VISTA COLONY WEST & NAGS HEAD ACRES DRAINAGE IMPROVEMENT PLANS" as prepared by Bissell Professional Group and dated 28 December 2011. Said plans hereby adopted by reference and made a part of this change order. The additional work scope is for a defined portion (not all) of the aforementioned engineered plans. The defined portion of work generally starts at an existing drop inlet at the north end of S. Meekins Avenue (station 0+00) and ends at a proposed drop inlet (station 6+56.4) just north of the intersection of S. Meekins and Barnes Street.

Total cost of this change order is \$24,718.58 (Twenty four thousand seven hundred eighteen dollars and fifty eight cents).

CONTRACT COST SUMMARY:

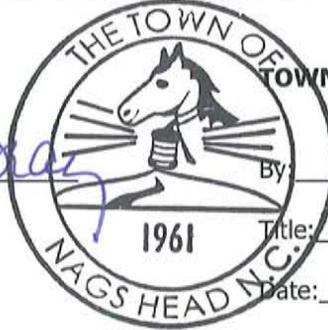
Original Contract price:	\$210,300.00
Amount added by this CO (No.1)	<u>\$24,718.58</u>
Revised Total Contract amount:	\$235,018.58

2. SIGNATURES

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

Witnessed or Attested By:

Mia Allen



TOWN OF NAGS HEAD

By:

C. J. ...

Title:

TOWN MANAGER

Date:

2/8/12

I certify that my Bonding Company will be notified forthwith that my contract completion date and contract amount have been changed by this Change Order, and that a copy of the approved Change Order will be sent upon receipt by me to my surety.

Tom Lewis

CONTRACTOR

By:

R. Brubaker

Title:

Project Mgr.

Date:

2/7/12

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

[Signature] 2.8.12
Finance Officer



BARNHILL CONTRACTING COMPANY

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

job name

Vista Colony West

CHANGE PROPOSAL

CHANGE ORDER #1

date

24-Jan-12

Item No.	Item Description	Quantity	Unit	Unit Price	Price
1	18" storm drain pipe	628.00	LF	\$ 27.65	\$ 17,364.20
2	12" storm drain pipe	34.00	LF	\$ 23.52	\$ 799.68
3	drop inlets	4.00	EA	\$ 1,318.00	\$ 5,272.00
4	rip rap at one pipe outlet	3.00	TN	\$ 86.00	\$ 258.00
5	sawing asphalt road for crossline	42.00	LF	\$ 1.35	\$ 56.70
6	asphalt road repair	2.00	TN	\$ 316.00	\$ 632.00
7	abc stone base repair	6.00	TN	\$ 56.00	\$ 336.00
		total		ADD	\$ 24,718.58

original contract		\$	210,300.00
revised total before this change order		\$	210,300.00
amount this change order	ADD	\$	24,718.58
new total contract to date		\$	235,018.58

Barnhill Contracting

date

1-24-12

Town of Nags Head

date

acceptance

NOTES:

1 Additional time for this work will be negotiated into the completion date.



4704 North Croatan Highway
PO Box 1050
Kitty Hawk, North Carolina 27949-1050
252-261-2207 Fax: 252-261-1093

www.barnhillcontracting.com

1-24-12

Mr. Ralph Barile
Nags Head Deputy Director
Town of Nags Head
Post Office Box 99
Nags Head, NC 27959

Re: Vista Colony West
Nags Head, NC

Dear Mr. Barile,

In response to your request for proposed extra work items, I have prepared the list of items with prices for your review as attached on page two.

In formulating our proposal for this extra work to be done concurrently with the contract work on Vista Colony West, I have used our bid line item prices for the original project as bid on November 14, and have attached a copy of my original bid printout for your review. The only item which is a different work item is the 18" storm drain pipe. The unit price shown for that item represents only the difference in pipe material price from 12" to 18", with all other cost being the same.

If you need additional information, please do not hesitate to call me.

Yours very truly,

BARNHILL CONTRACTING COMPANY

A handwritten signature in cursive script, appearing to read 'Ricky Brake'.

Ricky Brake
Project Manager

RB/rb

11/14/2011 8:33

VISTACOLONYW VISTA COLONY WEST

BID TOTALS

<u>BidItem</u>	<u>Description</u>	<u>Status - Rnd</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
9	PORTOJOHN		1.000	LS	272.10	272.10
10	CLEAR AND GRUB		1.000	LS	20,046.86	20,046.86
11	SILT FENCE		4,900.000	LF	2.28	11,172.00
12	CONSTRUCTION ENTRANCE		21.000	TN	43.63	916.23
13	EXCAVATE RETENTION BASIN		860.000	CY	3.82	3,285.20
14	REMOVE SIGNS, MAILBOXES, ETC		1.000	LS	1,324.04	1,324.04
15	CHECK DAMS		10.000	EA	657.27	6,572.70
16	SAWING		1,200.000	LF	1.35	1,620.00
17	REMOVE CONCRETE		1,153.000	SY	7.58	8,739.74
18	TRAFFIC CONTROL MOB		1.000	LS	883.45	883.45
19	CHECK UTILITIES		1.000	LS	1,917.64	1,917.64
20	REMOVE / REPLACE FENCE- SUB		1.000	LS	2,109.45	2,109.45
30	12" ADS N-12 SOLID PIPE		1,239.000	LF	23.52	29,141.28
35	MASONRY DROP INLETS 24" X 36"		8.000	EA	1,318.54	10,548.32
40	ASPHALT ROAD REPAIR		12.000	TN	316.90	3,802.80
45	ABC REPAIR STONE FOR ROADS		48.000	TN	56.60	2,716.80
46	TEMP STONE FOR DRIVEWAYS		380.000	TN	21.01	7,983.80
48	RIP RAP CLASS A		87.000	TN	86.21	7,500.27
49	SWALES		4,473.000	LF	5.97	26,703.81
60	4" CONCRETE DRIVEWAY REPLACEMENT		1,153.000	SY	38.48	44,367.44
68	FINE GRADE SHOULDERS		7,057.000	SY	1.65	11,644.05
70	SEEDING		1.300	AC	2,288.97	2,975.66
71	EXCELSIOR MATTING		1,400.000	SY	1.55	2,170.00
200	MOBILIZATION		1.000	LS	1,886.75	1,886.75

Bid Total



\$210,300.39