

**Robert O. Oakes, Jr.**  
Mayor

**Doug Remaley**  
Mayor Pro Tem

**Cliff Ogburn**  
Town Manager



**Town of Nags Head**  
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**Anna D. Sadler**  
Commissioner

**M. Renée Cahoon**  
Commissioner

**Susie Walters**  
Commissioner

NORTH CAROLINA  
DARE COUNTY

ANNUAL SERVICES CONTRACT

**THIS CONTRACT IS NOT VALID WITHOUT THE REQUIRED ACCOMPANYING/  
CORRESPONDING TASK AND PURCHASE ORDERS**

DMR  
(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 1<sup>st</sup> day of July 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 CREATIVE ENGINEERING SOLUTIONS, PLLC, 262 Mother Vineyard Rd., Manteo, NC 27954-9548 (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"):

a. Engineering design services for the following (typical) types of projects:

- Waterline replacement and extension projects for 6-, 8-, and 12-inch waterlines;
- Roadway, sidewalk and multi-use path projects;
- Parks and recreation facility projects;
- Traffic Engineering;
- Stormwater management and drainage improvement projects;
- Associated municipal engineering projects.

b. Plan Review:

- Technical review and approval of site plans, master plans, and subdivision plans;
- Technical review and approval of roadway improvements;
- Streets and stormwater/drainage projects;
- Beach and sound accesses;
- Recreation facilities; and
- Town buildings and facilities.

c. Project bidding and bid evaluations.

d. Contract administration.

e. Construction inspection.

Each design project, or review, subject to this contract will be initiated by request of the TOWN. Following the TOWN's request pursuant to this contract, the TOWN and the CONTRACTOR will participate in a Scoping meeting. Following the Scoping meeting, CONTRACTOR will submit a Scope of Work and Cost Proposal for each project. After reviewing said Scope of Work and Cost Proposal, the TOWN will issue a separate Task Order and Purchase Order for each design project or study requested. The CONTRACTOR's Cost Proposals must be reasonable considering the Scope of Work, and shall be based upon the CONTRACTOR's standard table of unit prices, a true copy of which is attached hereto as "Attachment: Schedule of Fees". The TOWN reserves the right to decline to pursue any requested design project or study which the TOWN deems to have an unreasonable Cost Proposal or which it deems to be not in the best interests of the TOWN to pursue. Each Task Order will contain a mandatory "No Later Than" completion date for portions of the scope of services covered. Each Task Order will contain a completion date for all services covered by that Task Order.

In accordance with the TOWN's "Request For Qualifications For Consulting Engineering," the CONTRACTOR will refrain from working for private clients on projects within the Town of Nags Head. The CONTRACTOR acknowledges this stipulation on page 5 of his "Statement of Qualifications" (dated December 9, 2011, copy attached), under **Current Work Load**.

Based upon both parties' satisfaction with the other party's performance of their obligations under this contract including the satisfactory performance and/or completion by the CONTRACTOR of the projects covered by this contract, the parties may agree to renew this contract or negotiate a similar contract for projects requested during FY 2013-2014 (July 1, 2013 through June 30, 2014). Any renewals or newly negotiated contracts shall include the CONTRACTOR's most current table of unit prices.

## 2. DESCRIPTION OF PROJECT

Projects performed by the CONTRACTOR pursuant to this contract may include, but shall not be limited to engineering design and permitting for waterline extension and replacement projects, street widening/enhancement, and drainage improvements, contract bidding, bid evaluation and recommendation, contract administration and construction inspection for projects designed.

## 3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES shall begin July 1<sup>st</sup>, 2012 and shall end June 30<sup>th</sup>, 2013. 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.

## 4. PAYMENT TO CONTRACTOR

The TOWN agrees to pay the CONTRACTOR at the rates specified for SERVICES satisfactorily performed in accordance with the Task Orders issued under this contract. Unless otherwise specified, the CONTRACTOR shall submit an itemized invoice to the TOWN by the tenth (10<sup>th</sup>) day of the month following 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 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 thirty (30) 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 SERVICES provided by CONTRACTOR and its agents pursuant to this CONTRACT. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage injury or loss to its 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.

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 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. If any conflict is found between this contract and any attachments, the contract language will govern.

12. SIGNATURES

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

Witnessed or Attested By:

Michelle H. Gray



TOWN OF NAGS HEAD

By: [Signature]

Title: TOWN MANAGER

Date: 7/16/12

Cheryl C. Pope



CONTRACTOR

By: [Signature]

Title: PRINCIPAL

Date: JULY 13, 2012

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

[Signature] 7-24-12  
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]  
TOWN ATTORNEY

Attachments: Statement of Qualifications  
Schedule of Fees

### **Municipal Plan Review & Technical Assistance:**

CES's is familiar with local zoning techniques and regulations as it applies to residential and commercial development. CES's focus on the physical design and arrangement of built and natural elements on a land parcel involves the knowledge and understanding of technical matters (utility infrastructure, zoning and building codes and ADA, circulation patterns, integration of man-made objects with the site's natural features: topography, vegetation, drainage, etc.) inherent to site development.

David Ryan, P.E. has a depth of experience with local municipal plan review and zoning technical assistance. This concentration is specific to the Town of Nags Head with exposure and assistance provided on hundreds of assignments including; residential and commercial development plan review, zoning text amendment assistance, on-site project review, professional reports and opinions, and public presentations. Each assignment was performed and completed promptly and without prejudice, meeting or exceeding the demands of the specific task request.

### **Current Work Load**

At this time, our work capacity is highly elastic. Current work involvement includes one (1) subdivision currently in planning and design, several commercial projects in various stages of design completion, approval and construction development, and potentially (2) waterline improvement projects in which authorization has yet to be issued for the planning & design.

CES is currently working below its maximum capacity and desires additional work. There is currently (1) existing conflict for a site development plan amendment for the Surfside Motel. The emphasis of this application is primarily related to building code issues, but will require zoning approval for this application. Based upon preliminary discussions, it appears that this application could potentially be handled administratively. If so, it is hopeful that this could be resolved in advance of the Town decision making process. No other existing conflicts exist or will be accepted if given the opportunity to serve in the requested capacity.

### **3.0 REPRESENTATIVE SERVICES**

CES is experienced and capable of providing a wide range of professional services. For the past 15 years, the principal of Creative Engineering Solutions, PLLC have provided a full range of site development and construction services to satisfied clients throughout the Northeastern Region of North Carolina. CES's Client Base consists of Local Governments, Commercial and Real Estate Developers, and Individual Property Owners.

The accumulated experience of includes civil, sustainable design, environmental, hydrology, structural, project management, contract administration, construction administration and feasibility study services.

## EXHIBIT "A"

### SCHEDULE OF FEES FOR PROFESSIONAL SERVICES FY 2012-2013

<b>CATEGORY</b>	<b>HOURLY BILLING RATE</b>
Civil Engineer	\$100.00
Designer/Cad Technician	\$75.00
Construction Administrator	\$90.00
Inspector	\$65.00
Administrative/Clerical Services	\$50.00
Subcontracted Services	cost + 10%

#### REIMBURSABLE EXPENSES

18x24 Prints	\$1.50
18x24 Mylar Prints	\$3.00
24x36 Prints	\$2.00
36x42 Prints	\$2.50
11x17 Copies	\$0.20
11x17 Color Copies	\$0.50
Letter/Legal Copies	\$0.10
Color Letter/Legal Copies	\$0.50
Mileage Expense	prevailing federal rate

The rates described hereon reflect the current rates for Creative Engineering Solutions, PLLC (CES) through June 30, 2013. Creative Engineering Solutions reserves the right to adjust pricing annually, with an effective date of July 1st.

Mileage expense rate adjustments will coincide with Federal standard mileage reimbursement rate schedules. The current 2012 rate is 55.5 cents per mile.