

1159



**Robert C. Edwards**  
Mayor

**Susie Walters**  
Mayor Pro Tem

**Cliff Ogburn**  
Town Manager

**Town of Nags Head**  
Post Office Box 99  
Nags Head, North Carolina  
27959  
Telephone 252-441-5508  
Fax 252-441-0776  
[www.nagsheadnc.gov](http://www.nagsheadnc.gov)

**M. Renée Cahoon**  
Commissioner

**John Ratzenberger**  
Commissioner

**Marvin Demers**  
Commissioner

NORTH CAROLINA  
DARE COUNTY

SERVICE CONTRACT  
PURCHASE ORDER #

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

17-00409  
(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 23<sup>rd</sup> day of August 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 MacConnell and Associates 1903 N. Harrison Ave. Ste 102 Cary North Carolina 27513, (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:

Scope of Work:

- Task 1 Initial project "Kick Off" meeting with Town of Nags Head Officials. An initial site visit and site inspection will also be conducted as part of this meeting. Fee: \$500.00.
- Task 2 Preparation of construction documents and required permitting will be completed for the Town of Nags Head – Gull Street Ground Water Tank – Cleaning, Repairs and Coating project. Scope shall include: cleaning the inside of the tank, making repairs on the tank, and coating the outside of the tank. Fee: \$2,500.00.
- Task 3 Assist the Town with advertising the project, solicit bids from contractors, respond to questions, assist with opening of bids, make award recommendation, and assist the Town with Contract preparation and award of Contract. Fee: \$800.00.
- Task 4 Construction oversight and contract administration will be conducted throughout the entire construction process. This fee includes the preconstruction meeting with the Contractor and

Town and periodic interim inspections. Fee: \$2,400.00, which amount will be billed in partial amounts each month with each monthly amount being based on estimated percent completion for the entire project for that month.

Task 5 A final inspection and Engineer's Certification will be conducted to close out the project. Fee: \$800.00.

Items not Included:

1. Permit Fees: Permit and plan review fees will be paid by the Town directly.
2. Any out of scope services not listed above shall be by amendment to this contract.

Fees: Fees for services are identified above. Costs for four sets of construction documents are included in above fees. Additional sets shall be billed according to standard rate sheet.

**TOTAL CONTRACT PRICE IS \$7,000 (SEVEN THOUSAND DOLLARS AND NO CENTS). PRICE IS IN ACCORDANCE WITH CONTRACTOR'S SCOPE OF SERVICES AND COST PROPOSAL, DATED AUGUST 12, 2016. (copy attached)**

It is mutually agreed by and between the TOWN and CONTRACTOR that SERVICES under this contract will commence AUGUST 23, 2016. The contract completion date shall be APRIL 10, 2017 with time being of the essence. If CONTRACTOR fails to complete work under this contract by APRIL 10, 2017, 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 \$100.00 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 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

ENGINEERING SERVICES FOR THE CLEANING, REPAIR AND PAINTING OF THE OF THE GULL STREET GROUND STORAGE TANK

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from AUGUST 23, 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 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 who are employed for 9 months or more during a 12-consecutive period; 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. IRAN DIVESTMENT ACT CERTIFICATION

CONTRACTOR certifies that CONTRACTOR is not listed on the list of persons who engage in investment activities in Iran, which list is created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58 of the Iran Divestment Act.

12. 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.

13. CONTRACT DOCUMENTS/AMENDMENTS

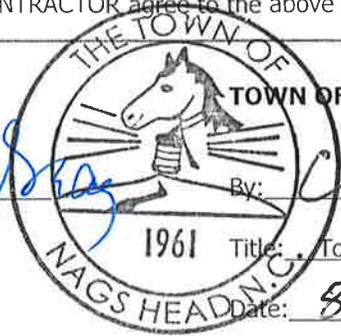
This document together with the purchase order and any attached exhibits constitutes the entire contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this CONTRACT and any attached documents,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

14. SEVERABILITY

The provisions of this CONTRACT are separate and divisible. In the event that any provision of this CONTRACT shall be held invalid, the remaining provisions shall be construed and shall be valid as if the invalid provisions were not a part of this CONTRACT.

15. SIGNATURES

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

\_\_\_\_\_  
Witnessed or Attested By:   
  
By:   
Title: Town Manager  
Date: 8-29-18

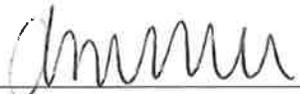
\_\_\_\_\_  
Witnessed or Attested By: 



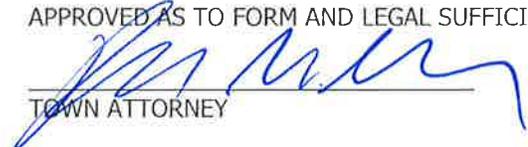
**CONTRACTOR**

By:   
Printed Name: Gary S. MacConnell  
Title: President  
Date: 8/24/16

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

  
\_\_\_\_\_  
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

  
\_\_\_\_\_  
TOWN ATTORNEY

## Town of Nags Head

### Gull Street Ground Water Tank – Cleaning, Repairs and Coating

#### Scope of Work:

- Task 1 Initial project “Kick Off” meeting with Town of Nags Head Officials. An initial site visit and site inspection will also be conducted as part of this meeting. Fee: \$,500.00.
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- Task 4 Construction oversight and contract administration will be conducted throughout the entire construction process. This fee includes the preconstruction meeting with the Contractor and Town and periodic interim inspections. Fee: \$2,400.00 total invoices are based on percent completion (approximately three site visits).
- Task 5 A final inspection and Engineer’s Certification will be conducted to close out the project. Fee: \$800.00.

#### Items not Included:

1. Permit Fees: Permit and plan review fees will be paid by the Town directly.
2. Any out of scope services not listed above shall be by amendment to this contract.

Fees: Fees for services are identified above. Costs for four sets of construction documents are included in above fees. Additional sets shall be billed according to standard rate sheet.



**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. 17-00409**

**SHIP TO**

NANCY CARAWAN  
 NAGS HEAD WATER PLANT  
 2200 LARK AVE  
 NAGS HEAD, NC 27959

**VENDOR**

Vendor #: MACC010

MACCONNELL & ASSOCIATES PC  
 1903 N HARRISON AVE  
 SUITE 101  
 CARY, NC 27513

ORDER DATE: 08/22/16  
 DELIVERY DATE: 08/18/16  
 STATE CONTRACT:  
 VENDOR ACCT NUM:  
 VENDOR PHONE #: (919) 467-1239  
 VENDOR FAX #: (919) 319-6510  
 REQUISITION #: R1700171

**MAIL INVOICE TO:**

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

| QUANTITY | DESCRIPTION                  | ACCOUNT NO               | UNIT PRICE | TOTAL    |
|----------|------------------------------|--------------------------|------------|----------|
| 1.00     | engineering for Gull st tank | 61-810-6-5774-00         | 7,000.0000 | 7,000.00 |
|          |                              | CAPITAL OUTLAY EQUIPMENT |            |          |
|          |                              |                          | TOTAL      | 7,000.00 |

**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.

**IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. 143C-6A-5(a):** By acceptance of this purchase order, vendors, contractors, and/or subcontractors affirm they are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4, Iran Divestment Act Certification.

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.