Town of Nags Head

Public Works Contract Review Cover Form

Your review and comments are needed no later than:

8/1/14

Contract Name : 8th St. Water Tower

Contract Originator : Nancy Roop Carawan

☒ New contract ☐ Change Order ☐ Task Order

☒ Service Contract ☐ Equipment Contract ☐ Engineering Contract ☐ Construction Contract

Reviewer	Approval Date	Revisions to be made
Town Engineer	7-22-14	Minor Revisions
Finance Director	8/1/14	
Town Clerk	7-21-14	
Town Attorney	7-21-14	Made changes

Robert C. Edwards
Mayor

Susie Walters
Mayor Pro Tem

Cliff Ogburn
Town Manager

Town of Nags Head
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M. Renée Cahoon
Commissioner

John Ratzenberger
Commissioner

Marvin Demers
Commissioner

NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # 15-0812

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

(CONTRACTOR *initials*)

THIS CONTRACT is made and entered into this the 1st day of August 2014 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 909 Aviation Parkway, Ste 1400 Morrisville, NC 27560, (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. The meeting will be conducted following execution of this agreement. An initial site visit and tank inspection will also be conducted as part of this meeting. Fee: $2,000.00 ($1,800.00 M/R Equip. and $200.00 Capital).

Task 2 A Technical Memo will be drafted for the Town of Nags Head to be reviewed by the Public Works Director and Staff. This Memo will outline the project scope based on the tank inspection conducted in Task 1, coating and design alternatives, recommendation and construction procedures. Fee: $1,000.00 ($900.00 M/R Equip. and $100.00 Capital).

Task 3 Preparation of construction documents and required Application for Water Tank Reconditioning Plan Approval (Note $50.00 fee) will be completed for the Town of Nags Head 8th Street Elevated Tank Recoat & Mixer Project. Scope shall include the optional addition of a PAX mixer

in addition to the recoating of the tank. Fee: $3,000.00 ($2,300.00 M/R Equip. and $700.00 Capital).

Task 4 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: $2,000.00 ($1,800.00 M/R Equip. and $200.00 Capital).

Task 5 Construction oversight and contract administration will be conducted throughout the entire construction process. This fee includes three inspections during recoating of the tank. Fee: $1,500.00 each or $4,500.00 total ($1,400.00 M/R Equip. and $100.00 Capital each; or $4,200.00 M/R Equip. and $300.00 Capital total).

Task 6 A finial inspection and Engineer's Certification will be conducted to close out the project. Fee: $2,000.00 ($1,800.00 M/R Equip. and $200.00 Capital).

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 $14,500 (FOURTEEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS). PRICE IS IN ACCORDANCE WITH CONTRACTOR'S SCOPE OF SERVICES AND COST PROPOSAL, DATED JULY 26, 2014. (copy attached) LINE ITEM BREAK DOWN OF TOTAL COST IS $12,800 (TWELVE THOUSAND EIGHT HUNDRED DOLLARS AND NO CENTS) FROM MAINTENANCE AND REPAIR OF EQUIPMENT AND $1,700 (ONE THOUSAND SEVEN HUNDRED DOLLARS AND NO CENTS) FROM CAPITAL OUTLAY.

It is mutually agreed by and between the TOWN and CONTRACTOR that SERVICES under this contract will commence AUGUST 6, 2014. The contract completion date shall be MARCH 27, 2015 with time being of the essence. If CONTRACTOR fails to complete work under this contract by MARCH 27,2015, 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 REPAIR, PAINTING, INSTALLATION OF A PAX MIXER OF THE 8TH STREET WATER TOWER

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from JULY 22, 2014 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; 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.

11. 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.

12. 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.

AGREEMENT FOR SERVICES

This Agreement is made and entered into this 26th day of July, 2014 by and between

MacConnell & Associates, P.C. ("M&A")

and

Town of Nags Head, North Carolina ("Client")

for

8th Street Elevated Tank Recoat & Mixer

The following scope of work shall be completed to meet the objectives of the Town of Nags Head's Request for Proposals for the above referenced project.

Scope of Work:

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13. SIGNATURES

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

TOWN OF NAGS HEAD

Witnessed or Attested By:

By:

Title: Town Manager

Date: 8/12/14

CONTRACTOR

Witnessed or Attested By:

Corporate Seal:

By:

Printed Name: Gary S. MacConnell

Title: President

Date: 8/6/14

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

8-12-14

Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

TOWN ATTORNEY