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## Town of Nags Head

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Nags Head, North Carolina 27959  
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NORTH CAROLINA  
DARE COUNTY

SERVICE CONTRACT  
PURCHASE ORDER # 12-00403

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

DMR  
(ENGINEER initials)

THIS CONTRACT is made and entered into this the 06<sup>th</sup> day of October 2011, 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. Inc., 262 Mother Vineyard Rd., Manteo, NC 27954 (hereinafter referred to as "ENGINEER"), 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:

**Services provided for the "Construction Phase" shall include, but not be limited to, construction stakeout, construction administration, construction record and certification & commissioning for the "Town of Nags Head Whalebone Junction Park," in accordance with ENGINEER'S "2011 Capital Improvements Project Whalebone Park Site Development, Engineering / Surveying Proposal - Construction Phase" and cost proposal, dated August 4, 2011 (copy attached).**

**Total contract price is \$4,317.00. (Four Thousand, three hundred seventeen dollars and fifty cents). Price is in accordance with ENGINEER'S proposal, dated August 4, 2011 (copy attached).**

It is mutually agreed by and between the TOWN and the ENGINEER that work under this contract will commence no later than October 12, 2011 and the contract completion date shall be no greater than 30 days beyond completion of the described Site improvements, with time being of the essence. If ENGINEER fails to complete work under this contract by this date, 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 ENGINEER hereby agrees that said sum shall be deducted from monies due the ENGINEER under the contract or, if no money is due, the ENGINEER hereby agrees to pay 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

Work under this consists of all civil engineering and surveying services related to supporting construction phase services for the development of Whalebone Park, including all necessary staking, record survey preparation, attendance at the pre-construction meeting, periodic site visits during construction, attendance at the final inspection, preparation of a project "punch list" and preparation of Engineer's Certifications for installed infrastructure improvements as per state requirements for the Town's Whalebone Junction Park.

3. TERM OF CONTRACT

The term of this CONTRACT for Construction Phase SERVICES is from October 12, 2011 to site improvement completion plus 30 days. 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 ENGINEER

The TOWN agrees to pay at the rates specified for SERVICES satisfactorily performed in accordance with this contract. Unless otherwise specified, the ENGINEER 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. The project, as bid, will be paid on a unit price basis. Invoices will be prepared on the basis of actual hours of work expended by each participant – i.e. Project Manager, Design Engineer, Surveying Crew, GIS Specialist, etc.

5. INDEPENDENT ENGINEER

Both the TOWN and the ENGINEER agree that the ENGINEER shall act as an independent ENGINEER and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the ENGINEER'S duties under this contract. Accordingly, the ENGINEER shall be responsible for payment of all Federal, State and local taxes arising out of the ENGINEER'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 ENGINEER is acting as an independent ENGINEER and shall perform SERVICES in accordance with currently approved methods and practice in the ENGINEER'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

#### 6. INSURANCE AND INDEMNITY

The ENGINEER 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 ENGINEER shall be fully responsible to the TOWN for the acts and omissions of its sub-Engineers and of persons either directly or indirectly employed by it, as the ENGINEER is for the acts and omissions of persons directly employed by it.

In addition, the ENGINEER 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 ENGINEER is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the ENGINEER 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 ENGINEER agrees to furnish the TOWN proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

The ENGINEER 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 ENGINEER shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the services. The ENGINEER 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 services and other persons who may be affected thereby.

#### 8. NON-DISCRIMINATION IN EMPLOYMENT

The ENGINEER shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The ENGINEER 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 ENGINEER 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 ENGINEER 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 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 ENGINEER agree to the above contract.

Witnessed or Attested By:

Michelle H. [Signature]  
BY: [Signature]  
Title: Town Manager  
Date: 10-10-11



Cheryl C. Ryan

Corporate Seal:



ENGINEER

By: [Signature]

Printed Name: DAVID RYAN

Title: PRINCIPAL

Date: Oct. 9, 2011

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

[Signature] 10-10-11  
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]  
TOWN ATTORNEY

**Creative Engineering Solutions, PLLC**

David M. Ryan, P.E., NC LID  
262 Mother Vineyard Rd.  
Manteo, NC 27954

August 4, 2011

Cliff Ogburn, Town Manager  
Town of Nags Head  
P.O. Box 99  
Nags Head, NC 27959

**Re: 2011 Capital Improvements Project  
Whalebone Park Site Development,  
Engineering / Surveying Services  
Proposal- Construction Phase  
(REVISED)**

Dear Mr. Ogburn:

In accordance with our recent discussion, I am pleased to submit the following proposal for the provision of consulting engineering / surveying services to the Town of Nags Head for the subject project for your review and approval.

The work associated with this proposal involves construction related services for the development of the Town of Nags Head Whalebone Park.

I have prepared a summary of the various engineering / surveying services proposed to accomplish the construction phase and have attached that to this proposal letter as Exhibit "A". The proposed compensation and method of payment for these services is also included at the end of this Exhibit.

Execution of the proposal in the spaces provided on the next page of this proposal letter and return of one copy of the proposal with Exhibit "A" will serve as my authorization to commence work on this assignment.

Should you have any questions regarding the scope of services or fee proposed, please do not hesitate to call. Thank for the opportunity to be of service to the Town on this very important project. I look forward to working with you and the Town staff toward its successful completion.

Sincerely,



David M. Ryan, P.E., NC LID  
Creative Engineering Solutions, PLLC

Attachment: Exhibit "A"

**EXHIBIT "A"**  
**SCOPE OF SERVICES (Con't.)**

1. Preparation of additional copies of the contract documents for distribution to the Town and the Contractor who has been awarded the construction contract;
2. Special site visits (beyond those noted in Part 5- Engineering Services item #2 above) to address specific construction problems/matters (only at the request of the Director or Assistant Director of Public Works);

Services that may be required for the construction administration of this project, in addition to what has been described hereon, will be billed to the Town at an hourly reimbursable rate of **\$90.00/hour**. No charges will be billed to the Town for any travel expenses to and from the project site during the course of the construction phase for these consulting services. Additional Non-labor costs such as printing and reproduction will be billed based upon actual costs for the generation of the required material.

**CONTRACT AMOUNT:**

Pursuant to the Town's request, all services related to the proposed drainage elements have been separated from the remainder of the services noted hereon. All described consulting services associated with this Agreement shall be billed to the Town at the beginning of each month for all included CAD work, surveying, and construction administration services. Printing and reproduction will be provided by the Engineer. The following tabular outline provides for a proposed cost breakdown of the above referenced anticipated surveying and engineering services;

<b>Type of Service</b>	<b>Fee Amount</b>
<b>Site Element Services</b>	
Part 5- Site Construction Phase	\$2,695
<b>Subtotal</b>	<b>\$2,695</b>
<b>Drainage Element Design</b>	
Part 5- Site Construction Phase	\$1,622
<b>Subtotal</b>	<b>\$1,622</b>
<b>Total Estimated Fees</b>	<b>\$4,317.00</b>

**EXHIBIT "A"**  
**SCOPE OF SERVICES (Con't.)**

Design field surveying services shall be performed by a third-party surveying firm in addition to construction staking and as-built production surveys, which shall also be performed by the same third-party surveying firm. Surveying and Engineering services will be billed directly to the Town in a single invoice format after review and approval of monthly invoices by the Engineer. The maximum billing for all services described hereon, (including surveying), shall not exceed **\$4,317.00** without written authorization from the Town for an amendment to this Agreement.

Karen Heagy  
 Town of Nags Head  
 P.O. Box 99  
 Nags Head, NC 27959

12-00403

ORDER DATE: 08/08/11  
 REQUISITION NO: R1200136  
 DELIVERY DATE: 07/25/11  
 STATE CONTRACT:  
 F.O.B. TERMS: Destination

VENDOR #: CREAT010

CREATIVE ENGINEERING SOLUTION  
 262 MOTHER VINEYARD RD  
 MANTEO, NC 27959

Phone: (252)473-5566 Fax: (252)473-5566

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	Drainage Design Const phase As per Contract and Proposal dated 8-4-11.	2-10-530-4-5661-00 GRANT PIER PARKING	1,622.0000	1,622.00
1.00	Site Design Const phase As per Contract and Proposal dated 8-4-11.	2-10-530-4-5661-00 GRANT PIER PARKING	2,695.0000	2,695.00
			TOTAL	4,317.00

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 vendor for processing.

Town of Nags Head  
Public Works Contract Review Cover Form

Your review and comments are needed no later than:

August 12, 2011

Contract Name: Whalebone Junction Park Construction Phase Services Engineering      Contract Originators: Karen

<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 checked="" type="checkbox"/> Engineering Contract <input type="checkbox"/> Construction Contract	
Reviewer	Approval Date
Town Manager	8/16/11
Finance Director	8/10/11
Town Clerk	8/10/11
Town Attorney	8/16/11
	Revisions to be made
	Made changes. KBH