

Robert O. Oakes, Jr.
Mayor

Doug Remaley
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

Anna D. Sadler
Commissioner

M. Renée Cahoon
Commissioner

Susie Walters
Commissioner

NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # _____

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

(CONTRACTOR initials)

THIS CONTRACT is made and entered into this the 29th day of March 2013, 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 R.P.C. Contracting, Inc., P. O. Box 333, 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:

To furnish all construction required for a pathway repair project spanning from eastern extents of the NCDOT right-of way margin of S. Old Oregon Inlet Rd. (N.C.S.R 1243) from Whalebone Junction to the southern terminus of S. Old Oregon Inlet Rd. (N.C.S.R 1243), Nags Head, NC in accordance with bid proposal "S. Nags Head Multi-Use Path Repair Project", as prepared by Town of Nags Head, and dated March 18, 2013.

Total contract price is \$ 37,875.40 (Thirty Seven Thousand Eight Hundred Seventy Five Dollars and Forty Cents). Price is in accordance with CONTRACTOR's bid Proposal, dated March 19, 2013 (copy attached).

It is mutually agreed by and between the TOWN and CONTRACTOR that work under this contract will commence April 2, 2013. Work shall progress until complete. The contract completion date shall be no later than May 24th, 2013, with time being of the essence. If CONTRACTOR fails to complete work under this contract by May 24th, 2013, 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 \$200.00 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

CONCRETE –

Class A concrete, as per the North Carolina Department of Transportation Standard Specifications for Roads and Structures, latest editions now in force or hereafter adopted, shall be used. This includes delivery of concrete from a facility that is certified by the North Carolina Department of Transportation. Portland cement concrete for, driveway aprons, sidewalks and other items as specified shall have a minimum 28 day compressive strength of 3,500 psi. A 6"x6"xW1.4xW1.4 welded wire reinforcing fabric shall be installed throughout the pavement section and placed at mid-depth. The quantity to be paid will be determined by the surface area of concrete removed and multiplied by the thickness of the concrete replacing it.

SIDEWALKS/DRIVEWAY APRONS-

Shall conform to the North Carolina Department of Transportation, (NCDOT), 2012 Roadway Drawings, Division 08 Incidentals. Pathway sections shall consist of a minimum 4" thickness with driveway aprons consisting of a minimum 6" thickness.

SIDEWALK/DRIVEWAY APRON JOINTS-

Shall conform to the North Carolina Department of Transportation, (NCDOT), 2012 Roadway Drawings, Division 08 Incidentals. Control joints shall be established at 5' intervals with expansion joints established at 50' on center, unless otherwise notified by the designated Town project representative.

REMOVAL OF EXISTING SIDEWALK-

The quantity to be paid will be the number of square feet of existing concrete acceptably removed and transported to at an approved off-site location. The actual quantity will be determined by actual measurements along the surface of the sidewalk before its removal. It is estimated that the concrete sections scheduled for removal range between 4" to 6" in thickness. Shall conform to the North Carolina Department of Transportation, (NCDOT), 2012 Roadway Drawings, Division 08 Incidentals. Control joints shall be established at 5' intervals with expansion joints established at 50' on center, unless otherwise notified by the designated Town project representative.

SIDEWALK ALIGNMENT-

All sections of concrete scheduled for replacement shall directly align with the existing sidewalk sections to establish a continuous and uniform pathway. All "replaced" concrete sections shall conform to the American Disability Act (ADA) construction standards. Sidewalks should have a maximum cross slope of 2%. Pathway construction shall match existing grade and shall not create restrictions to overland flow of stormwater runoff into existing inlets, ditches, or swales.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from March 29, 2013 until the obligations of the CONTRACT are fulfilled 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 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 in which SERVICES are completed in full. 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 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

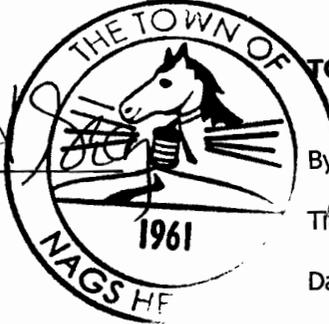
This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents,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

12. SIGNATURES

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

Witnessed or Attested By:

Michelle F. [Signature]



TOWN OF NAGS HEAD

By: [Signature]

Title: TOWN MANAGER

Date: 4/8/13

[Signature]

Corporate Seal:

CONTRACTOR

By: [Signature]

Printed Name: ROBERT D. PARKER

Title: PRESIDENT

Date: 4/3/13

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

[Signature] 4-9-13
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

[Signature]
TOWN ATTORNEY

PROPOSAL

for

S. NAGS HEAD MULTI-USE PATH REPAIR PROJECT TOWN OF NAGS HEAD

General project description: All construction required for a pathway repair project spanning from eastern extents of the NCDOT right-of-way margin of S. Old Oregon Inlet Rd. (N.C.S.R 1243) from Whalebone Junction to the southern terminus of S. Old Oregon Inlet Rd (N.C.S.R.1243) , Nags Head, NC and as specifically described in the Scope of Work and Scheduled Replacement Locations, attached hereto.

The undersigned, as bidder, proposes and agrees if this proposal is accepted to contract with the Town of Nags Head for the furnishing of all materials, equipment, and labor necessary to complete the construction of the work described in these documents in full and complete accordance with plans, specifications, and contract documents, and to the full and entire satisfaction of the Town of Nags Head for the sum of:

BASE BID: thirty seven thousand eight hundred twenty five ⁴⁰/₁₀₀ Dollars \$ 37,875.40

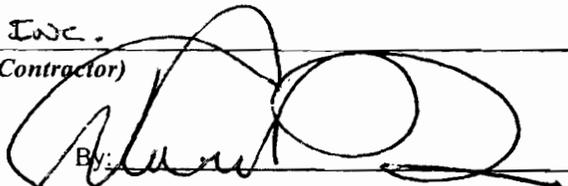
Respectively submitted this 19th day of MARCH 2013

R.P.C. CONTRACTING, INC.

(Contractor)

Federal ID#: 56-1889957

License #: 34430

By: 

Title: PRESIDENT

(Owner, partner, corp. Pres. Or Vice President)

Address: PO Box 333

Attest: (corporation)

KITTY HAWK NC 27949

(Corporate Seal)

By: M. P. P.

Title: Secretary
(Corporation, Secretary, Ass't Secretary.)

S. NAGS HEAD PATHWAY & DRIVEWAY APRON REPAIR & REPLACEMENT PROJECT

SCHEDULE OF REPLACEMENT LOCATIONS

Item	Replacement Area (Approximate SF)			Address (Location)	Surface Type
1	25	x	9	8017 SOOIR DOLPHIN MOTEL DRIVEWAY(N)	Concrete
2	25	x	8	8017 SOOIR DOLPHIN MOTEL DRIVEWAY (S)	Concrete
3	22	x	8	E GOVERNOR ST DRIVEWAY	Asphalt
4	23	x	8	HURON ST. DRIVEWAY	Asphalt
5	46	x	8	8201 SOOIR WHALEBONE MOTEL DRIVE	Concrete
6	14	x	8	8203 SOOIR DRIVEWAY	Concrete
7	18	x	8	8213 SOOIR DRIVEWAY	Ex. Aggregate
8	38	x	8	8319 SOOIR DRIVEWAY	Concrete
9	10	x	8	SEABIRD CT.	Concrete
10	10	x	8	8425 SOOIR DRIVEWAY	Concrete
11	9	x	14	8513-C SOOIR DRIVEWAY	Concrete
12	16	x	8	E CARIBSEA DRIVEWAY	Concrete
13	10	x	8	8805 SOOIR DRIVEWAY	Concrete
14	8	x	52	OUTER BANKS FISHING PIER DRIVEWAY	Concrete
15	8	x	24	8907 SOOIR VIKING COURT DRIVEWAY	Concrete
16	10	x	9	9031 SOOIR DRIVEWAY	Ex. Aggregate
17	9	x	8	9113 SOOIR DRIVEWAY	Concrete
18	8	x	8	9205 SOOIR DRIVEWAY	Concrete
19	8	x	8	9223 SOOIR DRIVEWAY	Concrete
20	8	x	8	9225 SOOIR DRIVEWAY	Concrete
21	8	x	8	9241 SOOIR DRIVEWAY	Concrete
22	16	x	8	OLYMPIC ST DRIVEWAY	Concrete
23	8	x	16	9601 SOOIR DRIVEWAY	Concrete
24	8	x	9	9605 SOOIR DRIVEWAY	Concrete
25	12	x	16	9721 SOOIR DRIVEWAY	Concrete
26	12	x	10	10313 SOOIR DRIVEWAY	Concrete

**S. NAGS HEAD PATHWAY & DRIVEWAY APRON REPAIR & REPLACEMENT PROJECT
 BID TABULATION**

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	Mobilization	1	LS	3,600. ⁰⁰	3,600. ⁰⁰
2	Traffic Control Measures in accordance w/NCDOT Standards	1	LS	4,750. ⁰⁰	4,750. ⁰⁰
3	Right-of-Way restoration (as required)		SF	0. ⁵⁵	0. ⁰⁰
4	Removal and disposal of existing 4" concrete surface		SF	2. ²⁵	0. ⁰⁰
5	Removal and disposal of existing asphalt pavement section	360	SF	2. ⁵⁰	900. ⁰⁰
6	Removal and disposal of existing 6" concrete driveway section	3513	SF	2. ³⁵	8,255. ⁵⁵
7	Replace existing 4" thick pathway section		SF	3. ²⁵	0. ⁰⁰
8	Replace existing 6" thick driveway apron	3873	SF	4. ⁴⁵	17,234. ⁸⁵
9	Concrete Material Testing	1	LS	3,135. ⁰⁰	3,135. ⁰⁰

Robert O. Oakes, Jr.
Mayor

Doug Remaley
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.townofnagshead.net

Anna D. Sadler
Commissioner

M. Renée Cahoon
Commissioner

Susie Walters
Commissioner

Bid Opening

Informal Bid Opening – 2012 SNH Multi-Use Path Project
Tuesday, March 19, 2013 - 3:00 p.m.

Bidder	Representative	Address
R.P.C. CONTRACTING	JAY HAWKOTTE	PO Box 333 KITTY HAWK NC 27949

Attendees:

David Ryan _____
Michelle Gouy _____
JAY HAWKOTTE _____

Bids are subject to review to determine math accuracy

Robert O. Oakes, Jr.
Mayor

Doug Remaley
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.townofnagshead.net

Anna D. Sadler
Commissioner

M. Renée Cahoon
Commissioner

Susie Walters
Commissioner

Bid Opening

Vendor	Bid Bond / Deposit	Bid Amount
RPO	N/A	\$ 37,875.40
	N/A	

Attendees:

DAVID RYAN
Michelle Gray
Jay Hawekotte

BIDS ARE SUBJECT TO REVIEW

PERFORMANCE BOND

Travelers Casualty and Surety Company of America
Hartford, CT 06183

Bond No.: 105762788

CONTRACTOR:

(Name, legal status and address)

R.P.C. Contracting, Inc.
PO Box 333
Kitty Hawk, NC 27949

OWNER:

(Name, legal status and address)

Town of Nags Head
PO Box 99
Nags Head, NC 27959

CONSTRUCTION CONTRACT

Date: March 29, 2013

Amount: \$37,875.40

Description:

(Name and location)

South Nags Head Multi-Use Path Repairs

SURETY:

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America

BOND

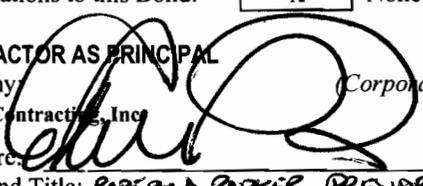
Date: April 3, 2013

(Not earlier than Construction Contract Date)

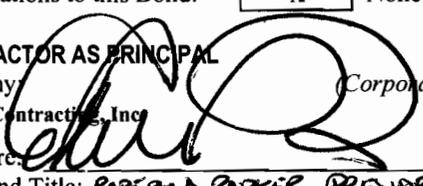
Amount: \$37,875.40

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

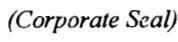
Company:  *(Corporate Seal)*

R.P.C. Contracting, Inc.

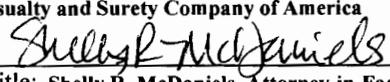
Signature: 

Name and Title: **ROBERT D. PARKER, PRESIDENT**

SURETY

Company:  *(Corporate Seal)*

Travelers Casualty and Surety Company of America

Signature: 

Name and Title: **Shelly R. McDaniels, Attorney-in-Fact**

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Bankers Insurance, LLC
PO Box 2589
Elizabeth City, NC 27906
(252) 338-3322

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- 1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the

Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails

to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____ (Corporate Seal)

Company: _____ (Corporate Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____

Address: _____

Address: _____



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 226075

Certificate No. 005341945

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Shelly R. McDaniels , Sherry S. Castillo, Suzette C. Ward, Pamela E. Dockendorf, Leona L. Burham, and Sherry Shaw Dowd

of the City of Elizabeth City, State of North Carolina, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 21st day of January, 2013.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 21st day of January, 2013, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

PAYMENT BOND

Travelers Casualty and Surety Company of America
Hartford, CT 06183

Bond No.: 105762788

CONTRACTOR:

(Name, legal status and address)

R.P.C. Contracting, Inc.

PO Box 333

Kitty Hawk, NC 27949

OWNER:

(Name, legal status and address)

Town of Nags Head

PO Box 99

Nags Head, NC 27959

CONSTRUCTION CONTRACT

Date: March 29, 2013

Amount: \$37,875.40

Description:

(Name and location)

South Nags Head Multi-Use Path Repairs

SURETY:

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America

BOND

Date: April 3, 2013

(Not earlier than Construction Contract Date)

Amount: \$37,875.40

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company:

R.P.C. Contracting, Inc.

Signature:

Name and Title: ROBERT D. PARKER, PRESIDENT

(Corporate Seal)

SURETY

Company:

Travelers Casualty and Surety Company of America

Signature:

Name and Title: Shelly R. McDaniels, Attorney-in-Fact

(Corporate Seal)

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Bankers Insurance, LLC

PO Box 2589

Elizabeth City, NC 27906

(252) 338-3322

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment

The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 edition

furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title: _____
Address: _____

PUBLIC WORKS % KAREN HEAGY
TOWN OF NAGS HEAD
2200 LARK AVE
NAGS HEAD, NC 27959

13-02373

ORDER DATE: 04/10/13
REQUISITION NO: R1300666
DELIVERY DATE:
STATE CONTRACT:
F.O.B. TERMS: Destination

VENDOR #: RPCCO010

RPC CONTRACTING INC
P O BOX 333
KITTY HAWK, NC 27949

Phone: (252)261-3336 Fax: (252)491-2176

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	WS MUP Repair Please do not fax po. Contract	3-10-530-4-5438-00 MAINT/REPAIR OTHER	37,875.4000	37,875.40
			TOTAL	37,875.40

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.